

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

IN THE MATTER OF THE APPLICATION
OF NATIVE AMERICAN TELECOM, LLC
FOR A CERTIFICATE OF AUTHORITY TO
PROVIDE LOCAL EXCHANGE SERVICE
WITHIN THE STUDY AREA OF
MIDSTATE COMMUNICATIONS, INC.

Docket No. TC11-087

**NATIVE AMERICAN TELECOM, LLC'S
STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to SDCL 15-6-56(c) and ARSD 20:10:01:01.02, Native American Telecom, LLC ("NAT") hereby submits the following statement of undisputed material facts in support of its motion for summary judgment.

NAT'S APPLICATION FOR CERTIFICATE OF AUTHORITY

1. On October 11, 2011, NAT filed its Application for Certificate of Authority ("Application") with the South Dakota Public Utilities Commission ("Commission").
2. Exhibit A to this Application contains NAT's "Certificate of Organization – Limited Liability Company" from the South Dakota Secretary of State's Office. (Application – Exhibit A).
3. Exhibit B to this Application contains a listing of NAT's key management personnel. (Application – Exhibit B).

4. Exhibit C to this Application contains NAT's confidential financial statements. (Application – Exhibit C).

5. On November 30, 2011, Commission Staff served a series of Data Requests on NAT. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 2).

6. NAT's Response Date to the Commission Staff's Data Requests was December 21, 2011. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 3).

7. NAT provided its Responses to the Commission Staff's Data Requests in a timely manner. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 4).

8. On January 27, 2012, NAT filed its Revised Application for Certificate of Authority ("Revised Application") with the Commission.

9. NAT's Revised Application incorporates the original Application's Exhibits A-C. (Revised Application).

10. NAT's Revised Application seeks authority to provide local exchange and interexchange service within the Crow Creek Sioux Tribe Reservation ("Reservation") which is within the study area of Midstate Communications, Inc. ("Midstate"). (Revised Application, page 1).

11. NAT's Revised Applications provides all information required by ARSD 20:10:32:03. (Revised Application).

12. On January 31, 2012, NAT's Revised Application was "deemed complete" by the Commission's Staff. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 5).

NAT, LLC

13. NAT's business address is 253 Ree Circle, Fort Thompson, South Dakota 57339, Telephone: 949-842-4478, Facsimile: 562-432-5250, Web page: NativeAmericanTelecom.com. (Revised Application, page 2; Direct Testimony of Jeff Holoubek on Behalf of NAT, page 3) (hereinafter "Holoubek Testimony, page -").

14. NAT is a tribally-owned telecommunications company organized as a limited liability company under the laws of South Dakota. (Revised Application, pages 2-3; Holoubek Testimony, page 3).

15. NAT's principal office is located at 253 Ree Circle, Fort Thompson, South Dakota 57339. (Revised Application, page 2; Holoubek Testimony, page 4).

16. NAT's registered agent is Scott R. Swier, 133 N. Main Street, P.O. Box 256, Avon, South Dakota 57315. (Revised Application, page 2; Holoubek Testimony, page 4).

17. NAT has a certificate of authority from the South Dakota Secretary of State to transact business in South Dakota. (Revised Application, page 4 and Exhibit A; Holoubek Testimony, page 4).

18. NAT's Federal Tax Identification Number is 26-3283812.
(Revised Application, page 12; Holoubek Testimony, page 12).
19. NAT's South Dakota sales tax number is 1012-1173-ST.
(Revised Application, page 12; Holoubek Testimony, page 12).
20. NAT's ownership structure consists of the Crow Creek Sioux Tribe (51%) ("Tribe"), P.O. Box 50, Fort Thompson, SD 57339-0050, Native American Telecom Enterprise, LLC (25%) ("NAT Enterprise"), 747 S. 4th Ave., Sioux Falls, SD 57104, and WideVoice Communications, Inc. (24%) ("WideVoice"), 410 South Rampart, Suite 390, Las Vegas, NV 89145. (Revised Application, pages 3, 6; Holoubek Testimony, pages 4-5).
21. The Tribe is a federally-recognized Indian tribe with its tribal headquarters located on the Crow Creek Sioux Tribe Reservation ("Reservation") in Fort Thompson, South Dakota. (Revised Application, page 3).
22. NAT Enterprise is a telecommunications development company. (Revised Application, page 3).
23. WideVoice is a telecommunications engineering company.

NAT'S TECHNICAL CAPABILITIES

24. NAT seeks to provide facilities-based telephone service to compliment its advanced broadband services. (Revised Application, page 1).

25. NAT proposes to offer local exchange and interexchange service within the Reservation, which is within the study area of Midstate. (Revised Application, page 6; Holoubek Testimony, page 13).

26. NAT will provide service through its own facilities. (Revised Application, page 6; Holoubek Testimony, pages 8, 10).

27. NAT is currently interconnected with Midstate and other carriers for the exchange of telecommunications traffic. (Revised Application, page 6; Holoubek Testimony, page 8).

28. NAT is using WiMAX (Worldwide Interoperability for Microwave Access) technology operating in the 3.65 GHZ licensed spectrum providing service to residential, small business, hospitality and public safety. (Revised Application, pages 6-7; Holoubek Testimony, page 8).

29. The network supports high-speed broadband services, voice service, data and Internet access, and multimedia. (Revised Application, page 7; Holoubek Testimony, page 8).

30. Through the use of advanced antenna and radio technology with OFDM1 OFDMA (Orthogonal Frequency Division Multiplexing), NAT is able to deliver wireless IP (Internet Protocol) voice and data communications. (Revised Application, page 7; Holoubek Testimony, page 9).

31. This 4G technology offers flexible, scalable and economically viable solutions that are key components to deploying in vast rural environments, such as the Reservation. (Revised Application, page 7; Holoubek Testimony, page 9).

32. NAT has established a toll-free number and email address for all customer inquiries and complaints, and has a physical location on the Reservation to handle customer complaints and inquiries within twenty-four (24) hours. (Revised Application, page 8; Holoubek Testimony, pages 9-10).

33. NAT has established connectivity with telecommunications carriers to provide its customers with access to 911, operator services, interexchange services, director assistance, and telecommunications relay services. (Revised Application, page 8).

34. NAT will target its direct marketing efforts to only those individuals and organizations within the Reservation. (Revised Application, page 9; Holoubek Testimony, page 10).

35. As a newly-formed limited liability company, NAT is not registered or certificated to provide telecommunications services in other states, nor has NAT applied for or ever been denied authority to provide telecommunications services in other states. (Revised Application, page 10; Holoubek Testimony, page 11).

36. NAT will utilize advertising designed to market its services. (Revised Application, page 10; Holoubek Testimony, page 11).

37. NAT will not solicit customers via telemarketing. (Revised Application, page 10; Holoubek Testimony, page 11).

38. NAT will require all personnel to be trained in NAT's policies and procedures to ensure affirmative customer selection of service from NAT. (Revised Application, pages 10-11; Holoubek Testimony, page 11).

39. NAT will require customers to complete an order form and/or a Letter of Authorization ("LOA") selecting NAT as the customer's carrier, if a consumer is switching local service providers. (Revised Application, page 11; Holoubek Testimony, page 11).

40. NAT will comply with all state and federal rules prohibiting the slamming of customers. (Revised Application, page 11; Holoubek Testimony, page 11).

41. NAT has never had a complaint filed against it with any state or federal commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered. (Revised Application, page 11; Holoubek Testimony, page 11).

42. NAT will post the current rates, terms and conditions for its local and interexchange services offered in South Dakota on its website located at www.NativeAmericanTelecom.com. (Revised Application, page 11; Holoubek Testimony, page 12).

43. NAT will notify customers by mail, email or telephone, depending upon the customer's expressed preference, as to how notification should be made, to apprise them of any changes in rates, terms and conditions of service. (Revised Application, page 11; Holoubek Testimony, page 12).

44. NAT is a tribally-owned telecommunications carrier currently providing service on the Reservation. (Revised Application, page 3; Holoubek Testimony, page 4).

45. In 1997, the Crow Creek Sioux Tribal Council established the Crow Creek Sioux Tribe Utility Authority ("Tribal Utility Authority") for the purpose of planning and overseeing utility services on the Reservation and to promote the use of these services "to improve the

health and welfare of the residents.” (Revised Application, page 4; Holoubek Testimony, page 5).

46. On October 28, 2008, the Tribal Utility Authority entered its *Order Granting Approval to Provide Telecommunications Service* (“Approval Order”). (Revised Application, page 4; Holoubek Testimony, page 5).

47. Under this Approval Order, NAT was “granted authority to provide telecommunications service on the . . . Reservation subject to the jurisdiction of the laws of the Crow Creek Sioux Tribe.” (Revised Application, page 4; Holoubek Testimony, pages 5-6).

48. NAT currently provides service on the Reservation pursuant to this Approval Order. (Revised Application, page 3; Holoubek Testimony, page 4).

49. NAT currently provides high-speed Internet access, basic telephone, and long-distance services on and within the Reservation. (Revised Application, page 3; Holoubek Testimony, page 5).

50. NAT has physical offices, telecommunications equipment, and telecommunications towers on the Reservation. (Revised Application, page 5; Holoubek Testimony, page 6).

51. NAT provides a computer training facility with free Internet and telephone service to tribal members. (Revised Application, page 5; Holoubek Testimony, page 6).

52. NAT provides 110 high-speed broadband and telephone installations at residential and business locations on the Reservation. (Revised Application, page 5; Holoubek Testimony, page 7).

53. NAT has established an Internet Library with six (6) work stations that provide computer/Internet opportunities for residents that do not otherwise have access to computers. (Revised Application, page 5; Holoubek Testimony, page 7).

NAT'S MANAGERIAL CAPABILITIES

54. NAT has years of managerial and technical experience in providing the telecommunications services proposed in its Revised Application. (Holoubek Testimony, page 13).

Patrick Chicas

55. Patrick Chicas ("Chicas") is the Chief Technical Officer for NAT. (Application – Exhibit B).

56. Chicas' business address is 410 South Rampart, Suite 390, Las Vegas, Nevada 89145.

57. Chicas has overall responsibility for NAT's strategic guidance, network operations, and network planning and engineering. (Application – Exhibit B).

58. Chicas also serves as President and a Managing Director for Wide Voice, LLC. (Application – Exhibit B).

59. From September 2003 to April 2009, Chicas was a co-founder and Chief Technology Officer of Commpartners, Inc. a nationwide CLEC. (Application – Exhibit B).

60. From August 2000 to November 2003, Chicas was the president, co-chairman, and a member of the board at Rubicon Media Group, a sector pioneering Internet publishing concern recently sold to Advanstar Communications, Inc. (Application – Exhibit B).

61. From March 1999 to August 2000, Chicas was the vice president for Data Services at Mpower Communications. (Application – Exhibit B).

62. While at Mpower, Chicas designed the company's entire IP infrastructure and the first production VoIP (Voice Over Internet Protocol) network for small business services. (Application – Exhibit B).

63. From January 1997 to September 1998, Chicas was the first executive hire and vice president of operations at Digital Island, Inc. (Application – Exhibit B).

64. Chicas also has prior telecommunications experience with Pacific Bell (now AT&T), PacTel Cellular (now Verizon), and GTE Mobilnet (now Verizon). (Application – Exhibit B).

Jeff Holoubek

65. Jeff Holoubek (“Holoubek”) is NAT’s acting president.

(Application – Exhibit B; Holoubek Testimony, page 2).

66. Holoubek received his law degree from the Boston University School of Law. (Application – Exhibit B; Holoubek Testimony, page 3).

67. Holoubek received his Masters of Business Administration (M.B.A.) from California State University – Fullerton. (Application – Exhibit B; Holoubek Testimony, page 3).

68. Holoubek holds Bachelor of Arts degrees in Accounting, Finance, and Philosophy. (Holoubek Testimony, page 3).

NAT’S FINANCIAL CAPABILITIES

69. NAT is not a publicly-held entity. (Holoubek Testimony, page 14).

70. NAT has provided its “confidential financial documents” for the Commission’s analysis and review. (Holoubek Testimony, page 14).

71. The “confidential financial documents” provided by NAT to the Commission include (1) NAT’s Balance Statements and (2) NAT’s Profit & Loss Statements (through December 31, 2011). (Affidavit of Scott R. Swier in Support of NAT’s Motion for Summary Judgment, ¶ 6).

72. NAT is committed and prepared to allocate the necessary resources to provide high-quality telecommunications services to its customers. (Holoubek Testimony, page 14).

Dated this 26th day of March, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of *NATIVE AMERICAN TELECOM, LLC'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT* was delivered via *electronic mail* on this 26th day of March, 2012, to the following parties:

Service List (SDPUC TC 11-087)

/s/ Scott R. Swier
Scott R. Swier