

**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

**REPLY MEMORANDUM IN SUPPORT OF
NATIVE AMERICAN TELECOM, LLC'S
MOTION TO COMPEL DISCOVERY**

INTRODUCTION

Native American Telecom, LLC ("NAT"), through its counsel, submits this reply memorandum in support of its motions to compel discovery.

FACTS

A. Procedural History Relevant To NAT's Motion To Compel Discovery

On October 11, 2011, NAT filed its Application for Certificate of Authority ("Initial Application") with the South Dakota Public Utilities Commission ("Commission"). NAT's Initial Application sought authority to provide local exchange and interexchange service within the Crow Creek Sioux Tribe Reservation ("Reservation"), which is within the existing study area of Midstate Communications, Inc. ("Midstate").

On November 30, 2011, Commission Staff served a series of Data Requests on NAT. NAT provided complete and timely Responses to these Data Requests.¹

On January 27, 2012, NAT filed its Revised Application for Certificate of Authority ("Revised Application") with the Commission. NAT's Revised Application also seeks authority to provide local exchange and interexchange service within the boundaries of the Reservation and within Midstate's existing study area. On January 31, 2012, NAT's Revised Application was "deemed complete" by the Commission's Staff.

On April 2, 2012, CenturyLink and Sprint filed their respective "Motions to Compel Discovery." On April 3, 2012, NAT filed its "Motion to Compel Discovery." These respective motions to compel discovery are now ripe to be heard by the Commission.²

¹ On November 30, 2011, the Commission also granted CenturyLink's and Sprint's intervention petitions.

² NAT must emphasize, however, that the parties' discovery dispute should be rendered moot by NAT's pending Motion for Summary Judgment. It is clear that NAT has complied with the requirements of ARSD 20:10:24:02 (Interexchange Services), ARSD 20:10:32:03 (Local Exchange Services), and ARSD 20:10:32:06 (Decision Criteria for Granting a Certificate of Authority).

Also, as the Commission is aware, Midstate Communications, Inc. ("Midstate") and the South Dakota Telecommunications Association ("SDTA") *do not object* to the Commission granting NAT's motion for summary judgment in this certification proceeding. The position taken by Midstate and SDTA further supports NAT's belief that (1) summary

LAW & ANALYSIS

A. The Commission's Rules Do Not Allow The Parties To Conduct Discovery In This Matter

From the very beginning of this certification proceeding, NAT has submitted that CenturyLink's and Sprint's discovery efforts are *wholly inappropriate* under the Commission's rules. SDCL 49-1-11 states that the Commission "may promulgate rules pursuant to chapter 1-26 concerning: . . . (4) Regulation of proceedings before the commission, including forms, notices, *applications*, pleadings, orders to show cause and the service thereof. . . ." (emphasis added).

Pursuant to this authority, the Commission promulgated ARSD 20:10:01:01.02, which provides:

Use of rules of civil procedure. Except to the extent a provision is not appropriately applied to an agency proceeding or *is in conflict* with SDCL chapter 1-26, another statute governing the proceeding, or *the commission's rules*, the rules of civil procedure as used in the circuit courts of this state shall apply.

(emphasis added).

Therefore, it is clear that the Commission has adopted *its own precise and specific rules* with respect to an applicant's request to provide

judgment is proper, (2) NAT has provided all required information to the Commission, (3) further discovery is improper and unnecessary, and (4) NAT should not be forced to further expend substantial time and financial resources in gaining *entry* to Midstate's service area.

interexchange telecommunications services and local exchange services in South Dakota. See ARSD 20:10:24:02 (Interexchange Services) and ARSD 20:10:32:03 (Local Exchange Services).

Most importantly for purposes of this discovery dispute, the Commission's own rules *clearly prohibit the parties* from engaging in discovery. ARSD 20:10:24:02(20) states that an applicant for interexchange services *shall only* be required to produce "[o]ther information *requested by the commission* needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the interexchange services it intends to offer. . . ." (emphasis added). Similarly, ARSD 20:10:32:03(25) states that an applicant for local exchange services *shall only* be required to produce "[o]ther information *requested by the commission* needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the local exchange services it intends to offer. . . ." (emphasis added).

As such, the Commission's own rules prohibit discovery in this certification proceeding. Only the *Commission* can request further information from an applicant. And as noted earlier, shortly after NAT filed its Initial Application, the *Commission* served its own set of data requests upon NAT. NAT provided complete and timely responses to

these data requests. After NAT filed its Revised Application, the Commission did not serve any additional data requests, undoubtedly because the Commission believed it unnecessary to request any further information from NAT. Soon after, NAT's Revised Application was "deemed complete" by the Commission's Staff.

The Commission's rules for reviewing a certificate of authority application preclude "discovery gamesmanship" and are based on sound practical principles. Consistent with the Federal Communications Act's purpose,³ the Commission has consistently viewed competition in the telecommunications industry as a benefit to the residents of South Dakota and has approved innumerable applications since 1997.

The Commission has established precise rules for applicants because the Commission recognizes the benefits of competition for South Dakota residents. South Dakota law does not envision the kind of elaborate (and unnecessarily drawn-out) proceedings that CenturyLink and Sprint propose. The Commission must review NAT's application in a manner consistent with the Commission's own rules. And while the Commission affords an opportunity to request a hearing on an

³The Telecommunications Act was enacted to "promote competition and reduce regulation in order to secure lower prices and higher quality services for . . . consumers and encourage the rapid deployment of new telecommunications technologies."

application before granting a certificate of authority, it appears that a hearing has never been requested or held for decades (if ever) in South Dakota. See, e.g., <http://puc.sd.gov/Dockets/Telecom/default.aspx> (providing a complete listing of the Commission's telecommunications dockets – including certificate of authority applications - from 1997-2012).

By enacting these specific and straight-forward rules, the Commission has streamlined *entry regulation* and opted to expedite competition in South Dakota. CenturyLink and Sprint propose an unprecedented level of *entry regulation* that is inconsistent with public policy and the Commission's own rules. CenturyLink and Sprint seek an extensive and unwarranted evidentiary investigation into NAT's entire business operation. However, CenturyLink's and Sprint's imaginative array of "potential issues" overreaches any *entry* regulations under South Dakota law and the Commission's rules.

Like any other applicant in the same position, NAT is only required to abide by the Commission's rules of entry. NAT has complied with each and every one of these rules. CenturyLink's and Sprint's conduct greatly exceeds the scope and purpose of the Commission's own rules in this certification matter.

CenturyLink's and Sprint's intervention has only one purpose: to erect massive regulatory and procedural barriers that delay competitive entry into the telecommunications market. Such delay undoubtedly serves CenturyLink's and Sprint's interests, but it does not serve the public good and is entirely inconsistent with the Commission's own rules. That CenturyLink and Sprint have so vigorously advocated for this extensive form of entry regulation suggests that these companies will derive a considerable strategic and competitive advantage. CenturyLink's and Sprint's actions frustrate the Commission's efforts in carrying out its role to open the interexchange and local exchange markets to competition. The Commission should not tolerate or condone these actions.⁴

In sum, NAT has met all of the certification requirements in South Dakota. NAT has followed the Commission's rules. NAT's Revised Application has been "deemed complete" by the Commission's Staff. The Commission's rules prohibit further discovery by the parties. Therefore, NAT once again asks the Commission to follow its rules, deny the parties'

⁴ CenturyLink's and Sprint's conduct has resulted in NAT's certification process being delayed far beyond any similar proceeding in the Commission's recent history. *See, e.g.,* <http://puc.sd.gov/Dockets/Telecom/default.aspx> (providing a complete listing of the Commission's telecommunications dockets - including certification applications - from 1997-2012).

respective motions to compel discovery, act expeditiously in resolving this narrow certification issue, and grant NAT's Revised Application.

B. If The Commission Disregards Its Own Rules And Permits CenturyLink And Sprint To Conduct Nearly-Unlimited Discovery, Then NAT's Motion To Compel Should Be Granted So That The Parties Are On "Equal Footing"

If the Commission disregards its own rules and permits CenturyLink and Sprint to conduct nearly unlimited discovery, then NAT must be entitled to the *same discovery opportunities*.⁵ CenturyLink and Sprint voluntarily commenced this intervention, became parties, and have demanded (for all practical purposes) nearly unlimited discovery in this certification proceeding. NAT has simply requested similar discovery information from CenturyLink and Sprint that these two companies are demanding from NAT. As such, neither CenturyLink nor Sprint can complain that NAT's discovery requests are somehow improper.

CenturyLink and Sprint are attempting to make this very straightforward certification proceeding a "referendum" on "access stimulation." The issue of "access stimulation" has no bearing whatsoever on whether

⁵ The Commission should note that although NAT believes CenturyLink's and Sprint's discovery demands are entirely improper in this certification proceeding, NAT acknowledges that it did serve its own discovery requests upon CenturyLink and Sprint. By doing so, however, NAT does not concede that discovery is proper. Rather, because of the expedited procedural schedule in this matter, if NAT would not have served any discovery requests on CenturyLink and Sprint, these companies would have undoubtedly later claimed that NAT somehow "waived" its right to do so.

NAT should be entitled to operate as a CLEC in Midstate's study area. However, if the Commission allows CenturyLink and Sprint to pursue discovery, the Commission cannot deny NAT the ability to proceed in a similar manner.

Again, if the Commission disregards its discovery rules, then NAT's discovery requests become essential in this matter. Under ARSD 20:10:32:06, NAT must establish "sufficient *technical, financial, and managerial ability* to provide the local exchange services described in its application. . . ." If the Commission finds that the scope of this certification proceeding should exceed anything allowed in the Commission's recent history, then NAT must be allowed to provide the Commission with a comparative analysis of the technical, financial, and managerial abilities of NAT and other companies (including CenturyLink and Sprint) that provide telecommunications services in South Dakota. Without this comparative information, NAT will be forced to "shoot at an unknown target." In other words, how can NAT know the "technical, financial, and managerial" standards it must meet for certification if it cannot prepare a comparative analysis between itself and other companies that the Commission has already certificated to provide telecommunications services in South Dakota? As a matter of fundamental fairness, the potentially unprecedented nature of this

proceeding requires that NAT be provided with this information so that it may present this comparative analysis and meet its burden under the Commission's rules.

C. Sprint's Discovery Responses Are Incomplete

Sprint alleges that NAT's discovery requests are "not properly supported," "irrelevant," "overbroad," and "unduly burdensome." ("Sprint's Memorandum in Opposition to NAT's Motion to Compel," pages 1-4 – dated April 14, 2012) ("Sprint's Opposition, page -- "). Sprint is incorrect.⁶

First, Sprint claims that NAT's request for Sprint's "internal business and financial information" is irrelevant in this proceeding. (Sprint's Opposition, pages 2-3). However, in its earlier submission, Sprint claims that its discovery requests 11, 12, 13, 14, 15, 16, 17, 28,

⁶ Consistent with its "standard" discovery practices, Sprint refuses to produce *any meaningful discovery* responses to the vast majority of NAT's discovery requests:

- Data Requests - 1.7, 1.8, 1.9, 1.10, 1.15, 1.17, 1.18, 1.22, 1.23, 1.24, 1.25, 1.27, 1.28, 1.29, 1.30, 1.31, 1.32, and 1.33
- Document Requests – 1, 2, 3, 4, 5, 6, and 7

Sprint has also provided *incomplete responses* to several other of NAT's discovery requests:

- Data Requests – 1.26, 1.34, 1.35, and 1.36

(See Exhibit 1 to NAT's Motion to Compel Discovery).

33 and document requests 1, 2, 3, 7, 8, and 9 are essential to demonstrate that NAT does not have sufficient "financial capabilities" to provide its proposed services. (Sprint's Memorandum in Support of Motion to Compel, pages 11-17).

If the Commission allows discovery to proceed, NAT must also be allowed to compare its financial information with that of Sprint.⁷ As such, Sprint must comply with NAT's discovery requests 1.22 and 1.23 (business plans, strategies, goals, or methods of obtaining revenues in South Dakota or any other state), 1.24 (wholesale pricing rates), 1.27 (bank accounts), 1.29 (business plans for the South Dakota market) and document requests #1 (documents evidencing future financing commitments), #2 (bank statements, general ledgers, journal entries, and other financial records that identify income and expenses), #3 (documents reflecting board of directors' meetings, minutes, resolutions, and by-laws), #4 (general ledger journal entries or other accounting records that support Sprint's balance sheets and profit and loss statements for 2009, 2010, and 2011), #5 (documents reflecting any loan received from any lender), and #7 (documents reflecting commitments for

⁷ This is especially true in light of recent *DowJones* reports highlighting Sprint's rapidly declining financial condition. (See "Declaration of Scott R. Swier in Opposition to CenturyLink's and Sprint's Motions to Compel Discovery" - Exhibit 4) (filed with the Commission on April 13, 2012).

future financing). Sprint has refused to comply with these discovery requests.

Directly related to “financial capabilities” is information related to the parties’ “internal workings.” Sprint submits to the Commission that its discovery requests 22, 27, 30, 31, 36, and 38 are absolutely essential to demonstrate the disingenuousness of NAT’s “internal workings.”

(Sprint’s Memorandum in Support of Motion to Compel, pages 7-11).

NAT must be allowed to compare its “internal working” information with that of Sprint. As such, Sprint must comply with NAT’s discovery requests 1.28 (names of Sprint’s employee’s and work locations), 1.32 (number of Sprint’s employees as of year-end 2010 and 2011), 1.33 (organizational chart showing all Sprint employees as of year-end 2011) and document request 3 (relating to Sprint’s directors’ meetings, minutes, resolutions, and bylaws).

NAT also has the burden of proving its “technical and managerial capabilities” to provide the proposed services. NAT must be allowed to compare its “technical and managerial capabilities” with that of Sprint. Sprint submits that its discovery requests 5, 6, 7, 18, 23, 24, 29, 41, 42, 43, and 44 are essential to “test the validity of NAT’s [technical and

managerial] statements.”⁸ (Sprint’s Memorandum in Support of Motion to Compel, pages 17-23). NAT must also be allowed to review similar information. As such, Sprint must comply with NAT’s discovery requests 1.30 (retail residential customers, business customers, and other customers in South Dakota as of year-end 2010 and 2011) and 1.31 (residential access lines, business access lines, conference calling access lines, and other access lines in South Dakota as of year-end 2010 and 2011) .

Second, Sprint submits that NAT’s discovery requests are “overly broad and unduly burdensome.” (Sprint’s Opposition, pages 3-4). This allegation is ironic in that NAT’s discovery requests to Sprint are nearly *identical* to Sprint’s discovery requests to NAT. *In other words, even Sprint concedes that its own discovery requests are overly broad, unduly burdensome, and not capable of being accurately comprehended.*⁹

⁸ In reality, Sprint is demanding this discovery so that it can serve as a “Super Commission” in this proceeding.

⁹ Sprint has filed the “Affidavit of Sonya Thornton” (“Thornton Affidavit”) in support of its claims of “overbreadth” and “undue burden.” However, Thornton’s affidavit *does not even reference this case*. See e.g., Thornton Affidavit, ¶ 2 (“I make this affidavit in support of Sprint’s Response to Northern Valley’s Motion to Compel”) (emphasis added); Thornton Affidavit, ¶ 12 (“I have reviewed Northern Valley’s Document Request No. 1”) (emphasis added); Thornton Affidavit, ¶ 13 (“Sprint includes this information in the event Northern Valley seeks to expand the custodian list beyond the individuals identified above”) (emphasis added). Based upon the fact that Thornton is unaware that this case involves NAT and

Third, Sprint makes the unavailing argument that it should not be required to produce relevant discovery because of the excessive cost and Sprint's status as "simply an intervenor in this case." The fact is that Sprint chose to intervene in this case. Sprint was granted intervention status. Sprint voluntarily became a party. Sprint is demanding irrelevant and voluminous discovery from NAT. Sprint is flaunting the Commission and its certification rules. Sprint is delaying this certification matter far beyond any reasonable time period. It is disingenuous of Sprint to now tell the Commission that NAT should be required to produce massive amounts of discovery, but Sprint should be entirely immune from doing likewise.

Finally, it is undisputed that the *only reason* Sprint has intervened in this *routine and limited certification matter* is the issue of "access stimulation." (See *e.g.*, Intervention Petition of Sprint; Sprint's Opposition, pages 2-4). Despite the Federal Communications Commission's ("FCC") recent Final Rule, Sprint has misled the Commission by depicting "access stimulation" as improper and subject to an extensive "investigation and hearing" in this limited certification matter. CenturyLink's and Sprint's actions have "opened the door" to the

its discovery requests, the Commission should disregard her affidavit as to "overbreadth" and the "undue burden" that Sprint will allegedly encounter in responding to NAT's discovery requests.

discovery of information regarding “access stimulation” and NAT must be given the opportunity to compare its alleged “access stimulation activities” with those of Sprint. Therefore, Sprint must comply with NAT’s discovery requests 1.7, 1.8, 1.9, 1.10, 1.15, 1.16, 1.17, 1.18, 1.19, 1.21, 1.25, and 1.26 as these requests are directly related to Sprint’s involvement with “access stimulation” issues.

In sum, if the Commission allows discovery in this proceeding, NAT has shown that its discovery requests are supported by “good cause,” “relevant to the subject matter involved” and “reasonably calculated to lead to the discovery of admissible evidence.” ARSD 20:10:01:22.01; SDCL 15-6-26(b)(1).¹⁰

¹⁰ Sprint’s responses to NAT’s data requests 1.15 (documents evidencing Sprint’s communications with any LEC, ILEC, CLEC, and/or IXC offering services in South Dakota), 1.22 (documents referencing Sprint’s business plans, strategies, goals, or methods of obtaining monies or revenues in South Dakota or in any other state), 1.23 (documents referencing Sprint’s business plans, strategies, goals, methods of obtaining monies or revenues from any retail, wholesale customer, including residents, businesses, local exchange carriers, and interexchange carriers, in South Dakota or any other state), 1.24 (documents relating to Sprint’s wholesale pricing rates from 2009-present), and 1.25 (documents relating to Sprint’s history of making payments to LECs, ILECs, and/or CLECs for terminating switched access charges from 2009-present date) assert that NAT’s requests seek “*privileged materials*.”

These assertions must also fail as Sprint has not produced a *privilege log* identifying the particular documents to which a *particular privilege may be asserted*. SDCL 15-6-26(b)(5) (“When a party withholds information otherwise discoverable under these rules by claiming that it is privileged . . . the party shall make the claim expressly and shall

D. CenturyLink's Discovery Responses Are Incomplete

CenturyLink alleges that NAT's discovery requests are "irrelevant," "beyond the reasonable scope of discovery," overly "broad," outside the "issues raised by the parties," and "unreasonable." ("CenturyLink's Response to NAT's Motion to Compel Discovery," pages 1-9 – dated April 13, 2012) ("CenturyLink's Opposition, page --"). CenturyLink is incorrect.¹¹

First, CenturyLink claims that NAT's request for CenturyLink's "internal business information" and "financial information" is irrelevant in this proceeding. (CenturyLink's Opposition, pages 5-9). However, as noted earlier, CenturyLink's fellow intervenor (Sprint) claims that this exact information is essential to demonstrate that NAT does not have

describe the nature of the documents, communications, or things not produced in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection").

¹¹ Also consistent with its "standard" discovery practices, CenturyLink refuses to produce *any meaningful discovery* responses to a significant portion of NAT's discovery requests:

- Data Requests – 1.16, 1.22, 1.23, 1.24, 1.27, 1.28, 1.30, 1.31, 1.32, 1.33, 1.34, and 1.36
- Document Requests – 1, 2, 3, 4, 5, and 7.

(See Exhibit 2 to NAT's Motion to Compel Discovery).

sufficient “financial capabilities” to provide its proposed services.

(Sprint’s Memorandum in Support of Motion to Compel, pages 11-17).

If the Commission allows the intervenors’ discovery to proceed, NAT must also be allowed to compare its “internal business information” and “financial information” with that of CenturyLink. As such, CenturyLink must comply with NAT’s data requests 1.22 and 1.23 (business plans, strategies, goals, or methods of obtaining revenues in South Dakota or any other state), 1.24 (wholesale pricing rates),¹² 1.27 (bank accounts), 1.28 (employee information), 1.30 (number of retail residential customers, traditional business customers, and any other customers in South Dakota), 1.31 (number of retail residential access lines, retail business access lines, conferencing calling access lines, and other access lines in South Dakota), 1.32 (number of CenturyLink employees as of year-end 2010 and 2011), 1.33 (employee organization chart as of year-end 2011) and document requests #1 (documents evidencing future financing commitments), #2 (bank statements, general ledgers, journal entries, and other financial records that identify income and expenses), #3 (documents reflecting board of directors’ meetings, minutes, resolutions, and by-laws), #4 (general ledger journal entries or other accounting records that support CenturyLink’s balance sheets and profit

¹² This information is also known in the telecommunications industry as “wholesale carrier, long distance termination, rate decks.”

and loss statements for 2009, 2010, and 2011), #5 (documents reflecting any loan received from any lender), and #7 (documents reflecting commitments for future financing). CenturyLink has refused to comply with these discovery requests.

Second, CenturyLink submits that NAT's discovery requests are "unreasonable." (CenturyLink's Opposition, pages 8-9) ("it certainly is an unreasonable request to demand CenturyLink to expend its resources to pull information about its financing, loans, employees names and locations, board minutes, and organizational charts for all of its employees").

CenturyLink's position must fail. "The party resisting production of discovery bears the burden of establishing lack of relevancy or that complying with the request would be unduly burdensome." *Lyon v. Bankers Life and Casualty Company*, Civ. 09-5070-JLV at *6 (District of South Dakota - Jan. 14, 2011). *See St. Paul Reinsurance Co. v. Commercial Financial Corp.*, 198 F.R.D. 508, 511 (N.D.Iowa 2000) ("[T]he mere statement . . . that [an] interrogatory [or request for production] [is] 'overly broad, burdensome, oppressive or irrelevant' is not adequate to voice a successful objection"). *Id.* (quoting *St. Paul Reinsurance*, 198 F.R.D. 511). Rather, "the party resisting discovery *must show specifically* how . . . each interrogatory [or request for production] is not relevant or

how each question is overly broad, burdensome, or oppressive.” *Id.*
(quoting *St. Paul Reinsurance*, 198 F.R.D. at 512) (emphasis added).

“[T]he fact that answers to [interrogatories or request for production] will be burdensome and expensive is not in itself a reason for refusing to order discovery which is otherwise appropriate.” *Id.* (quoting *In re Folding Carton Antitrust Litigation*, 83 F.R.D. 260, 265 (N.D.Ill.1979)). Also, “the fact that answering the interrogatories [or request for production] will require the objecting party to expend considerable time, effort, and expense consulting, reviewing, and analyzing huge volumes of documents and information is an insufficient basis to object.” *Id.* (quoting *Burns v. Imagine Films Entertainment, Inc.*, 164 F.R.D. 589, 593 (W.D.N.Y.1996)). CenturyLink has not met its burden of showing why NAT’s data requests and document requests should not be answered or documents not produced where it merely makes conclusory objections. Instead, CenturyLink filed “boiler plate objections” and simply refused to respond to several of NAT’s discovery requests, thereby depriving NAT of meaningful discovery.¹³

¹³ Any allegation by CenturyLink that NAT’s discovery requests seek “privileged materials” must also fail as CenturyLink has not produced a privilege log identifying the particular documents to which a particular privilege may be asserted. SDCL 15-6-26(b)(5) (“When a party withholds information otherwise discoverable under these rules by claiming that it is privileged . . . the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not

The fact is that CenturyLink intervened in this case. CenturyLink was granted intervention status. CenturyLink voluntarily became a party. CenturyLink is demanding irrelevant and voluminous discovery from NAT. CenturyLink is flaunting the Commission and its certification rules. CenturyLink is delaying this certification matter far beyond any reasonable time period. It is disingenuous of CenturyLink to now tell the Commission that NAT should be required to produce massive amounts of discovery, but CenturyLink should be entirely immune from doing likewise.

Finally, it is undisputed that the *only reason* CenturyLink has intervened in this *routine and limited certification matter* is the issue of “access stimulation.” (See *e.g.*, Intervention Petition of CenturyLink; CenturyLink’s Opposition, pages 2, 6). Despite the FCC’s recent Final Rule, CenturyLink has misled the Commission by depicting “access stimulation” as improper and subject to an extensive “investigation and hearing” in this limited certification matter. CenturyLink’s actions have “opened the door” to discovery of information regarding “access

produced in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection”).

stimulation” and NAT must be given the opportunity to compare its alleged “improper activities” with those of CenturyLink.¹⁴

E. NAT’s Motion To Compel Must Be Granted Because Its Discovery Request Are Supported By “Good Cause,” “Relevant To The Issues In This Proceeding,” And “Reasonably Calculated To Lead To The Discovery of Admissible Evidence.”

First, as stated previously, if the Commission finds that the scope of this certification proceeding should exceed anything allowed in the Commission’s recent history, then NAT must be allowed to provide the Commission with a comparative analysis of the technical, financial, and managerial abilities of NAT and other companies (including CenturyLink and Sprint) that provide telecommunications services in South Dakota. Without this comparative information, NAT will be forced to “shoot at an unknown target.”

In other words, how can NAT know the “technical, financial, and managerial” standards it must meet for certification if it cannot prepare a comparative analysis between itself and other companies that the Commission has already certificated to provide telecommunications services in South Dakota? As a matter of fundamental fairness, the

¹⁴ CenturyLink’s claim that NAT failed to comply with SDCL 15-6-37(a)’s “good faith certification” requirement is incorrect. (See CenturyLink’s Opposition, page 9). As CenturyLink’s filings show, the parties had multiple contacts regarding their respective discovery differences. It quickly became clear that the parties had reached an impasse and would require the Commission’s intervention to resolve these differences.

potentially unprecedented nature of this proceeding requires that NAT be provided with this information so that it may present this comparative analysis and meet its burden under the Commission's rules.

Second, NAT's motion to compel must be granted so that NAT can prove it is actually pricing its telecommunications services at a lower rate than CenturyLink and Sprint. Without this discovery, NAT cannot prove this fundamental issue.

Third, it is NAT's position that CenturyLink's and Sprint's primary motivation is to simply avoid paying NAT for services. It is noteworthy that CenturyLink and Sprint still refuse to provide payment to NAT for interstate terminating access fees (despite the fact that NAT's current interstate tariff fully complies with the FCC's Final Rule). For example, Sprint offers its "Anytime Minutes Option" calling plan (among several other plans) that requires a Sprint customer to pay \$69.99 for 450 minutes per month. As such, Sprint is guaranteed a payment of \$0.155/minute (fifteen and one-half cents per minute).

After a Sprint customer exceeds his 450 monthly minutes, however, the customer is required to pay Sprint \$0.45 (forty-five cents per minute) for each additional minute used. In other words, Sprint is guaranteed a per minute payment of at least \$.155 and yet refuses to pay NAT the \$.006327 (*i.e.*, 6/10ths of one penny) for the most important part of the

*call - call completion.*¹⁵ Sprint also has usage policies that purport to ban wireless consumers from calling “free” conferencing services. And although Sprint has the authority in its calling plans to eliminate this activity, Sprint chooses not to enforce these policies because it knows customer dissatisfaction (and the concomitant loss of revenue) would immediately occur. Instead, Sprint connects the call and still refuses payment to NAT.¹⁶

Fourth, it is necessary for NAT to demonstrate that CenturyLink and Sprint have been imposing unconscionably high transport rates at the wholesale level. These higher transport rates make call delivery more expensive to the call originator. In fact, CenturyLink and Sprint have

¹⁵ A copy of Sprint's “Customer Plan Options” is attached to this reply brief and marked as “Exhibit 1.” This document can also be found at http://shop.sprint.com/mysprint/shop/plan/plan_wall.jsp?INTNAV=WW:HE:Plans.

¹⁶ Under its “Website, Use & Network Management Terms” Sprint still views “Access Stimulation” as an unlawful practice that can result in the immediate termination of a customer’s service. However, based upon the substantial profits it recoups, Sprint does not enforce this policy. And yet Sprint still refuses to compensate NAT its 6/10ths of one penny for NAT’s call completion. A copy of Sprint’s “Website, Use & Network Management Terms” is attached to this reply brief and marked as “Exhibit 2.” This document can also be found at <http://www.sprint.com/legal/agreement.html?INTNAV=ATG:FT:Terms>

priced wholesale traffic so high that it has resulted in "call blocking" by other carriers and service providers.

In sum, NAT has shown that its discovery requests to CenturyLink and Sprint are supported by "good cause," "relevant to the subject matter involved" and "reasonably calculated to lead to the discovery of admissible evidence." ARSD 20:10:01:22.01; SDCL 15-6-26(b)(1).

CONCLUSION

CenturyLink's and Sprint's interventions are based on irrelevant claims that NAT intends to engage in "access stimulation" – an activity that the FCC has recently approved. However, this "access stimulation" issue has no bearing on whether NAT should be allowed *entry* into Midstate's service area.

CenturyLink's and Sprint's actions have undoubtedly met its purpose – to delay a prompt and orderly resolution of NAT's Revised Application. If CenturyLink and Sprint believe there is an issue that needs to be investigated, they should be required to file a complaint for Commission action – an action that is handled *separately* from reviewing NAT's Revised Application. This certification proceeding is not the proper forum for CenturyLink and Sprint to pursue such concerns.

The issue presented in NAT's Revised Application is whether it should be authorized to operate as a CLEC in Midstate's service area.

When deciding whether NAT should be issued a certificate of authority, the Commission must review NAT's Revised Application under the requirements of ARSD 20:10:24:02 (Interexchange Services), ARSD 20:10:32:03 (Local Exchange Services), and ARSD 20:10:32:06 (Decision Criteria for Granting a Certificate of Authority). In this case, NAT has complied with these rules and the Commission's Staff has deemed NAT's Revised Application to be "complete."

CenturyLink's and Sprint's concerns over "access stimulation" have no bearing on whether NAT should be allowed to operate in Midstate's service area. Rather, CenturyLink and Sprint only want to use this proceeding as a vehicle to conduct irrelevant and voluminous discovery without having to initiate a proper complaint against NAT. Nowhere do the Commission's rules allow these companies to act as a "Super Commission" and demand "more detailed answers" before the Commission reviews NAT's Revised Application.

However, if the Commission disregards its own rules and allows CenturyLink and Sprint to engage in their continued "gamesmanship," then NAT's motion to compel discovery must be granted so that NAT may have a fair hearing in this certification proceeding.

Dated this 18th day of April, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of *REPLY
MEMORANDUM IN SUPPORT OF NATIVE AMERICAN TELECOM, LLC'S
MOTION TO COMPEL DISCOVERY* was delivered *via electronic mail* on this
18th day of April, 2012, to the following parties:

Service List (SDPUC TC 11-087)

/s/ Scott R. Swier
Scott R. Swier

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You're shopping for a new device and plan 57101

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Change Plan

1. Plans 2. Devices 3. Services 4. Accessories

1. To choose your new plan, click the radio button next to the amount of minutes or megabytes you need and click Add to cart

	Individual	Family	Mobile Broadband	Laptops, tablets & more	Phone Connect	
	SIMPLY EVERYTHING®		EVERYTHING DATA	EVERYTHING MESSAGING	TALK	BASIC
	UNLIMITED (ON OUR NETWORK)		ANYTIME MINUTES OPTION	ANYTIME MINUTES OPTION	ANYTIME MINUTES OPTION	ANYTIME MINUTES OPTION
Talk	<input type="radio"/> Unlimited Minutes \$99.99 /mo**		<input type="radio"/> 450 Minutes 45¢ / additional min \$69.99 /mo**	<input type="radio"/> 450 Minutes 45¢ / additional min \$49.99 /mo**	<input type="radio"/> 450 Minutes 45¢ / additional min \$39.99 /mo**	<input type="radio"/> 200 Minutes 45¢ / additional min \$29.99 /mo**
			<input type="radio"/> 900 Minutes 40¢ / additional min \$89.99 /mo**	<input type="radio"/> 900 Minutes 40¢ / additional min \$69.99 /mo**	<input type="radio"/> 900 Minutes 40¢ / additional min \$59.99 /mo**	
Night and weekend calling starting at:	Unlimited		7 p.m.	7 p.m.	7 p.m.	9 p.m.
Roaming					69 ¢/min	69 ¢/min
Domestic long distance					Long distance while off-network roaming additional 25 ¢/min	Long distance while off-network roaming additional 25 ¢/min
Any Mobile, Anytime™						
<u>Push-to-talk</u>			SEE PUSH-TO-TALK OPTIONS	SEE PUSH-TO-TALK OPTIONS		
<u>Unlimited messaging (on our network)</u>					SEE MESSAGING OPTIONS	SEE MESSAGING OPTIONS
<u>Unlimited data (on our network)</u>				SEE DATA OPTIONS	SEE DATA OPTIONS	SEE DATA OPTIONS
Total for 0 device(s)						
	Add to cart	Add to cart	Add to cart	Add to cart	Add to cart	Add to cart
	See details	See details	See details	See details	See details	See details

** Monthly charges and equipment costs exclude Sprint surcharges, taxes and fees

Next, you'll pick a device for each plan before you can place your order. If you pick a smartphone, our \$10 Premium Data add-on charge will apply.



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Your Agreement with us

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Website, Use & Network Management Terms

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Acceptable Use Policy

Effective October 18, 2011

The following terms apply to your use of and access to any Sprint Nextel together with its subsidiaries, affiliates, agents, and licensors (collectively "Sprint") owned or operated website ("Website"), as well as any electronic transmission sent, received, posted, accessed, or stored via any network ("Network").

COVERAGE OF THIS POLICY

In addition to other agreements between you and Sprint, these terms explain the policies that govern your access to and use of our Website and Network. By accessing or using our Website or Network, you agree to these terms (collectively the "Policy"), as Sprint may modify it from time to time. Modifications to this Policy are effective upon its posting on our Website. If you do not agree to accept and comply with the Policy, then do not access or use our Website or Network.

ILLEGAL OR HARMFUL USE

You may access and use our Website and Network only for lawful purposes. You are responsible for any transmission you send, receive, post, access, or store via our Network, including the content of any communication. Transmitting, distributing, or storing any material that violates any applicable law is prohibited. Additionally, the following non-exhaustive list details the kinds of illegal or harmful conduct that is prohibited:

Infringement: Infringement of intellectual property rights or other proprietary rights including, without limitation, material protected by copyright, trademark, patent, trade secret, or other intellectual property right. Infringement may result from the unauthorized copying, distribution, and/or posting of pictures, logos, software, articles, musical works, and videos.

Offensive Materials: Disseminating or posting material that is unlawful, libelous, defamatory, obscene, indecent, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory, or otherwise objectionable. Without limiting the foregoing, you may not access or use our Website or Network in any manner for the transmission or dissemination of images containing child pornography.

Excessive Utilization of Network Resources: Consuming a disproportionate amount of available Network resources resulting in the potential to disrupt or degrade the Network or Network usage by others. The determination of what constitutes excessive use depends on the specific state of the Network at any given time. Excessive use is determined by resource consumption relative to that of a typical individual user of the Network and not by the use of any particular application.

Traffic Pumping/Access Stimulation: Using the Network to dial telephone numbers associated with free conference calls, free chat lines, or similar services that are used for traffic pumping/access stimulation. Traffic pumping/access stimulation, for this purpose, is defined as any and all activities that are designed to generate traffic to increase the intercarrier compensation billed to Sprint.

Export Violations: Violations of export laws, regulations, and rules, including, without limitation, violations of the Export Administration Act and the Export Administration Regulations administered by the Department of Commerce.

Fraudulent Conduct: (1) Conducting fraudulent business operations and practices; (2) offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, chain letters, and pyramid schemes); and (3) individual or business representation as an authorized 3rd party affiliation or agent for a business entity (e.g., Sprint) without the business' prior consent.

Falsification/Impersonation: Using the Network to impersonate any person or entity; falsely state or otherwise misrepresent your affiliation with any person or entity; or create a false identity for the purpose of misleading others. Without limiting the foregoing, you may not use invalid or forged headers, invalid or non-existent domain names, or other means of deceptive addressing.

Failure to Abide by Third-Party Network or Website Policies: Violating the rules, regulations, or policies that apply to any third-party network, server, computer database, or website that you access.

Harmful Content: Disseminating or posting content that is harmful to the Network or other users of the Network including, without limitation, viruses, Trojan horses, worms, time bombs, zombies, cancelbots, or any other computer programming routines that may damage, interfere with, secretly intercept or seize any system, program, data, or personal information.

ELECTRONIC COMMUNICATIONS

You may not distribute, publish, or send through our Network: (1) any spam, including any unsolicited advertisements, solicitations, commercial e-mail messages, informational announcements, or promotional messages of any kind; (2) chain mail; (3) numerous copies of the same or substantially similar messages; (4) empty messages; (5) messages that contain no substantive content; (6) very large messages or files that disrupt a server, account, newsgroup, or chat service; or (7) any message that is categorized as "phishing."

Likewise, you may not: (1) participate in spidering, harvesting, or any other unauthorized collection of e-mail addresses, screen names, or other identifiers of others or participate in using software (including "spyware") designed to facilitate such activity; (2) collect responses from unsolicited messages; or (3) use any of our mail servers or another site's mail server to relay mail without the express permission of the account holder or the site.

NETWORK SECURITY AND INTEGRITY

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You may not violate the security of our Network in any way. Such violations may result in criminal or civil liability. Sprint may, but is not obligated to, investigate any violation of our Network. Sprint may cooperate with law enforcement where criminal or unauthorized activity is suspected. By using Sprint products and services or sending, receiving, posting, accessing, or storing any electronic transmission via our Network, you agree to cooperate in any such investigation. Examples of Network security violations include, without limitation:

Hacking: Unauthorized access to or use of data, systems, or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without the express prior authorization of the owner of the system or network.

Interception: Unauthorized monitoring of data or traffic on any network or system without the express prior authorization of the owner of the system or network.

Intentional Interference: Interference with service to any user, host, or network including, without limitation, denial-of-service attacks, mail bombing, news bombing, other flooding techniques, deliberate attempts to overload a system, and broadcast attacks.

Falsification of Origin or Routing Information: Using, selling, or distributing in conjunction with the Network, any computer program designed to conceal the source or routing information of electronic mail messages in a manner that falsifies an Internet domain, header information, date or time stamp, originating e-mail address, or other identifier.

Avoiding System Restrictions: Using manual or electronic means to avoid any limitations established by Sprint or attempting to gain unauthorized access to, alter, or destroy any information that relates to any Sprint customer or other end-user. Sprint may, but is not obligated to, take any action it deems necessary to (1) protect its Network, its rights, or the rights of its customers or third parties, or (2) optimize or improve its Network, services, systems, and equipment. You acknowledge that such action may include, without limitation, employing methods, technologies, or procedures to filter or block messages sent through the Network. Sprint may, in its sole discretion and at any time, filter "spam" or prevent "hacking," "viruses," or other potential harms without regard to any preference you may have communicated to us.

INVESTIGATION AND ENFORCEMENT OF THE POLICY

We have the right, but are not obligated, to strictly enforce this Policy through self-help, active investigation, litigation, and prosecution.

Sprint reserves the right to act immediately and without notice to restrict, suspend, or terminate your use of the Network if it reasonably determines that your conduct may: (1) expose Sprint to sanctions, prosecution, civil action, or other liability; (2) cause harm to or interfere with the integrity or normal operations of Sprint's Network or networks with which Sprint is interconnected; (3) interfere with another Sprint customer's use of the Network; (4) violate any applicable law, rule, or regulation; or (5) otherwise present an imminent risk of harm to Sprint or its customers.

Sprint has the right, but not the obligation, to monitor or restrict any uses of the Network that Sprint reasonably believes in its sole discretion violate this AUP. You are solely responsible for all content that you transmit or receive utilizing the Network, and you are responsible for abuse of your account by others.

We may also access and disclose any information (including transactional information) related to your access and use of our Network for any lawful reason, including but not limited to: (1) responding to emergencies; (2) complying with the law (e.g., a lawful subpoena); (3) protecting our rights or property and those of our customers; or (4) protecting users of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such services. **INDIRECT OR ATTEMPTED BREACHES OF THIS POLICY AND ACTUAL OR ATTEMPTED BREACHES BY A THIRD PARTY ON BEHALF OF A COMPANY, CUSTOMER, OR USER MAY BE CONSIDERED BREACHES OF THIS POLICY BY SUCH COMPANY, CUSTOMER, OR USER.**

MISCELLANEOUS

Any failure to insist upon or enforce performance of any provision in this Policy will not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice will act to modify any provision in this Policy. Sprint may assign its rights and duties under these terms to that party at any time without notice to you. If any provision of this Policy is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions so that it does not affect the validity and enforceability of any remaining provisions.

QUESTIONS, COMMENTS & ABUSE

If you want to report any violations of this Policy, other than those concerning child pornography, please email us at abuse@sprint.net. To make a report concerning child pornography, please go to the following Web link: http://www.sprint.net/index.php?p=support_ce_request.

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Visitors Agreement

Effective June 15, 2011

Welcome to Sprint Nextel's website, a service of Sprint Nextel, together with its subsidiaries, affiliates, agents, and licensors (collectively "Sprint"). The following terms apply to your use of and access to any Sprint owned or operated website ("Website"). Certain products or services offered through our Website may have additional terms and conditions, which govern in the event of any inconsistency with the terms below.

COVERAGE OF THIS AGREEMENT

In addition to other agreements between you and Sprint, these terms explain the policies that govern your access to and use of our Website. By accessing or using our Website, you agree to these terms (collectively the "Visitors Agreement"), as Sprint may modify it from time to time, and you agree to comply with our Acceptable Use Policy (AUP), which can be found on our Website. If you do not agree to accept and comply with the Visitors Agreement and AUP, then do not access or use our Website.

LINKS TO THIRD-PARTY SITES

The Website may contain links to other websites that are maintained by third parties over which Sprint has no control. These links are provided for convenience only. Use of these links will cause you to leave this Website and use of third-party websites is entirely at your own risk. Sprint makes no representation or warranty concerning any other site or the information, products or services offered or appearing on or through these sites. Sprint does not sponsor or endorse the operators of the sites or the content, products, or services they provide. Sprint is not responsible or liable for the conduct of the sites' operators, the content, the availability, the accuracy, the quality, the advertising, the products, the services, or other materials offered at the sites. You are responsible for complying with the rules, regulations, or policies that apply to any third-party network, server, computer database, or website that you access.

UNSOLICITED SUBMISSION OF IDEAS

Although Sprint welcomes questions or feedback about your use of our Website and Sprint's services and products, Sprint does not accept, invite, or

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consider under any circumstances unsolicited submissions of ideas, creative suggestions, or proposals ("Ideas") relating to its business, including Ideas for services, products, technologies, processes, materials, product names, advertising campaigns, promotions, or marketing plans. This policy is intended to avoid disputes in the event that Sprint's products or marketing strategies seem similar to Ideas submitted to Sprint or its employees. Therefore, unless otherwise explicitly stated by Sprint, all Ideas and Intellectual property included in any unsolicited submission of Ideas will automatically be treated as non-confidential and as the sole property of Sprint, without any compensation whatsoever to you. Sprint will have no obligations to you with respect to such Ideas and has the right to destroy submissions of Ideas upon receipt.

ILLEGAL OR HARMFUL USE

You may access and use our Website only for lawful purposes and purposes that are not intended to cause harm. You are responsible for any transmission you send, receive, post, access, or store via our Website, including the content of any communication, as further provided in our AUP.

WEBSITE SECURITY AND INTEGRITY

You may not violate the security of our Website in any way. Such violations may result in criminal or civil liability. Sprint may, but is not obligated to, investigate any violation of our Website. Sprint may cooperate with law enforcement where criminal or unauthorized activity is suspected. By using Sprint Website, you agree to cooperate in any such investigation. Sprint may, but is not obligated to, take any action it deems necessary to (1) protect its Website, its rights, or the rights of its customers or third parties; or (2) optimize or improve its Website. You acknowledge that such action may include, without limitation, employing methods, technologies, or procedures to filter or block messages sent through the Website.

INVESTIGATION AND ENFORCEMENT OF THE VISITORS AGREEMENT

We have the right, but are not obligated, to strictly enforce this Visitors Agreement through self-help, active investigation, litigation, and prosecution.

Sprint reserves the right to act immediately and without notice to restrict, suspend, or terminate your use of the Website, if it reasonably determines that your conduct may: (1) expose Sprint to sanctions, prosecution, civil action or other liability; (2) cause harm to or interfere with the integrity or normal operations of Sprint's Website; (3) interfere with another Sprint customer's use of the Website; (4) violate any applicable law, rule, or regulation; or (5) otherwise present an imminent risk of harm to Sprint or its customers.

Sprint has the right, but not the obligation, to monitor or restrict any uses of the Website that Sprint reasonably believes in its sole discretion violate this Visitors Agreement or applicable law. You are solely responsible for all content that you transmit or receive utilizing the Website, and you are responsible for abuse of your account by others.

We may also access and disclose any information (including transactional information) related to your access and use of our Website for any lawful reason, including but not limited to: (1) responding to emergencies; (2) complying with the law (e.g., a lawful subpoena); (3) protecting our rights or property and those of our customers; or (4) protecting users of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such services. INDIRECT OR ATTEMPTED BREACHES OF THIS VISITORS AGREEMENT AND ACTUAL OR ATTEMPTED BREACHES BY A THIRD PARTY ON BEHALF OF A COMPANY, CUSTOMER, OR USER MAY BE CONSIDERED BREACHES OF THIS VISITORS AGREEMENT BY SUCH COMPANY, CUSTOMER, OR USER.

DISCLAIMER OF WARRANTIES AND LIABILITY

YOU UNDERSTAND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM ANY MATERIAL DOWNLOADED FROM OR OTHERWISE PROVIDED THROUGH A SPRINT WEBSITE. ANY CONTENT OR INFORMATION ACCESSED BY OR PROVIDED TO YOU THROUGH A SPRINT WEBSITE IS PROVIDED "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE." SPRINT, ITS AGENTS, AND ITS LICENSORS DO NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CONTENT OR INFORMATION AVAILABLE THROUGH ITS WEBSITE. YOU ACCESS SUCH CONTENT OR INFORMATION AT YOUR OWN RISK. SPRINT DOES NOT GUARANTEE THAT ITS WEBSITES WILL BE ERROR-FREE, CONTINUOUSLY AVAILABLE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. UNDER NO CIRCUMSTANCES WILL SPRINT, ITS AFFILIATES, ITS AGENTS OR ITS LICENSORS BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DAMAGES THAT ARISE FROM THE USE OF ITS WEBSITE. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND. FOR EXAMPLE, COMPENSATORY, SPECIAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES; LOSS OF DATA, INCOME, OR PROFIT; LOSS OF OR DAMAGE TO PROPERTY; AND CLAIMS OF THIRD PARTIES, EVEN IF WE ARE ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT THE AGGREGATE LIABILITY OF SPRINT, ITS AGENTS, AND ITS LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM IN ANY WAY CONNECTED TO ANY SPRINT WEBSITE WILL NOT EXCEED \$100.00. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES OR IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN SUCH STATES, THE LIABILITY OF SPRINT AND ITS AFFILIATES, AGENTS, AND LICENSORS IS LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH STATE LAW.

GOVERNING LAW

This Visitors Agreement is governed by and must be construed under the laws of the Commonwealth of Virginia. The federal and state courts of Fairfax County, Virginia, have exclusive jurisdiction over and venue of any suit that relates to this Visitors Agreement.

INDEMNIFICATION

You agree to indemnify, defend, and hold harmless Sprint from and against all claims, liabilities, losses, expenses, damages, and costs (including reasonable attorneys' fees) that arise from: (1) any violation of this Visitors Agreement by you; (2) any violation of any rights of a third party by you; (3) any violation of applicable law; (4) information or content that you submit, post, transmit, or make available through our Website; or (5) your use of our Website.

MODIFICATION OF THE VISITORS AGREEMENT

We reserve the right to modify this Visitors Agreement at any time, effective upon its posting, as modified, on www.sprint.com.

PRIVACY POLICY

Sprint respects the privacy of visitors to our site. Please take a few minutes to review our Privacy Policy.

MISCELLANEOUS

Any failure to insist upon or enforce performance of any provision in this Visitors Agreement will not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice will act to modify any provision in this Visitors Agreement. Sprint may assign its rights and duties under these terms to any party at any time without notice to you. If any provision of this Visitors Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions so that it does not affect the validity and enforceability of any remaining provisions.

QUESTIONS, COMMENTS & ABUSE

We invite you to send in your questions or comments about our site or to bring to our attention any material you believe to be inaccurate. Please

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