

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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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.

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Docket No. TC11-087

**SPRINT'S POST-HEARING REPLY BRIEF**

Sprint Communications Corp. L.P. (“Sprint”) respectfully submits this post-hearing reply brief on NAT’s Amended Application to obtain a certificate of authority from the Commission. Sprint responds only to NAT’s post-hearing brief, as neither the Commission Staff nor MidState took substantive positions in their opening briefs.<sup>1</sup>

**A. The Record Does Not Support NAT’s Assertions that it Is the Only Carrier that Can Provide Adequate Service to Ft. Thompson**

Throughout this case, NAT has argued that it is unique in its ability to provide services to residents in Ft. Thompson. NAT carries this theme into its post-hearing brief:

No other company is even attempting to serve this community in a way that its members can afford – certainly not Sprint or any other intervener. (NAT’s Br. p. 2.)

If, despite all of the evidence presented at the hearing, the dire and unsupported predictions of Sprint were to happen and NAT were to fail, people on the Reservation who could not obtain affordable service before would lose the affordable service they could only get from NAT. (NAT’s Br. p. 20.)

NAT is overstating its significance. First, NAT’s market penetration is strikingly low: NAT currently serves a tiny percentage of the residential population of Ft. Thompson, and it serves none of the other businesses listed on the Crow Creek Connections web site. SPRINT 31. And second, NAT’s services are not unique. MidState serves Ft. Thompson, and provides a discounted Lifeline offering that NAT cannot offer; AT&T serves the area; and Verizon has “really good service.” Tr. 82-83 (Sazue testifying about MidState and AT&T); Tr. 184 (Commissioner Nelson). The notion that Ft. Thompson

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<sup>1</sup> Sprint’s citation protocol and abbreviations are the same as those in its post-hearing brief.

will go without voice services, including 911, if NAT is shut down, is unsupported by the record.

**B. The Commission Should Scrutinize NAT's Statements of Fact**

By this time, the Commission should be accustomed to carefully scrutinizing factual representations made by NAT. As it has done before, NAT continues to play fast and loose with the facts. For example, NAT's statement that it has "complied with all applicable laws and regulations" (NAT Br. p. 3) is incorrect. *See, e.g.*, SPRINT 19, p. 6 (NAT admits that it neither provided E-911 service nor remitted E-911 assessments). Its statement that "a contract has been signed to expand NAT's network" (NAT Br. p. 10) is inaccurate. Tr. 145 (DeJordy testifying that the agreement between NAT and Tazca does not obligate NAT to buy anything). And, its statement that Mr. Farrar reviewed "only a balance sheet and a cash flow statement" (NAT Br. p. 14) is downright false. *See* Sprint 11 (nearly 100 pages of financial documents reviewed by Mr. Farrar); SPRINT 28, 2/14/14 Farrar Test., p. 21 (discussing his detailed review of NAT's 2013 general ledger).<sup>2</sup>

Sprint continues to recommend that the Commission examine NAT's factual statements with great care.

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<sup>2</sup> On the stand, Mr. Wald asked Mr. Farrar if he relied only on the balance sheet and cash flow statements, and his answer was "No." Tr. 504. NAT briefed this as if the answer had been "Yes."

**C. Mr. Farrar's Opinions Are Consistent with the Record Evidence, Sound Public Policy, and the Public Interest**

NAT is highly critical of Mr. Farrar in a way that is unfair and imbalanced. Its advocacy should be disregarded.

Mr. Farrar was quite clear that he reviewed all available NAT financial information as he formed his opinions (Tr. 504); that he sought, without success, any new NAT business plans (SPRINT 28, 2/14/14 Farrar Test., p. 5); and that he considered whether NAT could succeed if IXCs were paying NAT's bills (Tr. 563). In its post-hearing brief, however, NAT improperly criticizes Mr. Farrar for reviewing just two documents (NAT's Br. p. 14), for not evaluating unidentified business operations (*id.* at 14-15), and for not considering whether NAT could succeed if Sprint were paying NAT's bills (*id.* at 15). All three points miss the mark. NAT's criticism of Mr. Farrar's financial projections is off point and should be disregarded.

On the question of public policy and the public interest, NAT attacked Mr. Farrar's testimony that the Commission should deny the Amended Application even if NAT is not breaking the law.<sup>3</sup> Again, NAT is off base. Mr. Farrar explained, the FCC has found that traffic pumping hurts consumers and that some business plans, while not per se illegal, do not "sound right" and are not "good public policy." NAT Br. pp. 16-19

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<sup>3</sup> As should be clear, Sprint does not concede that NAT's operations are lawful, and nor does Mr. Farrar. Mr. Farrar agreed only that NAT's rates are in compliance with law. Tr. 584 (Farrar making clear the discussion was only as to rate levels). When traffic pumpers charge access on calls not described within their tariffs (as Sprint claims NAT has done), that violates federal law. *See, e.g., Qwest Commc'ns Co. v. Sancom, Inc.*, 28 FCC Rcd. 1982, Memorandum Opinion & Order (2013) (improper assessment of access charges violated the Communications Act).

(quoting Mr. Farrar). Mr. Farrar’s opinion makes perfect sense. The “public interest” test that the Commission applies does not require a finding of illegal action. Instead, it is those activities that might be technically legal, but bad for consumers, that the Commission must evaluate carefully in light of interests of consumers and the state. NAT’s argument that anything not technically illegal must be good public policy is at odds with the notion of a public interest test, and should be rejected by the Commission.

### **CONCLUSION**

For the reasons argued in Sprint’s post-hearing brief and reply brief, the Commission should deny NAT’s Amended Application.

Dated: April 14, 2014

**BRIGGS AND MORGAN, P.A.**

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