



2200 IDS Center
80 South 8th Street
Minneapolis MN 55402-2157
tel 612.977.8400
fax 612.977.8650

April 13, 2012

Philip R. Schenkenberg
(612) 977-8246
pschenkenberg@briggs.com

E-FILE: PUCDOCKETFILING@STATE.SD.US

Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre, SD 57501

**Re: 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.
TC-11-087**

Dear Ms. Van Gerpen:

Enclosed for filing in the above-entitled matter, please find the following documents filed
by Sprint Communications Company L.P.:

1. Sprint Communications Company L.P.'s Memorandum in Opposition to NAT's
Motion to Compel;
2. Affidavit of Sonya Thornton – Public Version; and
3. Affidavit of Sonya Thornton – Confidential Version.

By copy of same, the parties have been served.

If you have any questions, please contact me.

Very truly yours,

/s/ Philip R. Schenkenberg

Philip R. Schenkenberg

PRS/smo
Enclosures
cc: Service List

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

**SPRINT'S MEMORANDUM
IN OPPOSITION TO NAT'S
MOTION TO COMPEL**

Sprint Communications Company L.P. ("Sprint") respectfully opposes Native American Telecom, LLC's ("NAT") motion to compel Sprint to respond to NAT's discovery requests. Without citation or authority of any kind, NAT makes a one sentence argument that if the intervenors are entitled to discovery with respect to NAT's ability to meet certification standards, then NAT should be entitled to the same discovery information from Sprint and Century Link. This argument is baseless.¹

A. NAT's Motion is Not Properly Supported.

As an initial matter, NAT's motion should be denied due to the complete lack of authority and argument. Not only does NAT fail to identify any statute or rule that would make Sprint's internal business or financial information generally relevant to this certification case, it also fails to explain and argue the merits of each particular discovery request. It is not the Commission's job to sift through a complete set of discovery requests and determine 1) whether the answers are responsive, 2) whether the requests

¹ Since NAT filed its motion, Sprint has provided amended responses to Data Requests 1.34, 1.35, and 1.36, which request expert discovery. When Sprint served its initial responses, its expert testimony had not yet been filed, and there was no responsive information. Now that Sprint has filed the testimony of Mr. Farrar, it has amended those responses.

seek relevant information, and 3) whether Sprint's objections are well taken. NAT has failed to complete this fundamental task, and its motion should be denied.

B. Sprint's Financial and Business Information is Not Relevant.

The Commission is well aware of the standards that apply on a motion to compel. *See* Sprint's Memorandum in Support of Motion to Compel NAT. App. 1-2. In discovery, parties may only obtain discovery that is relevant, i.e., reasonably calculated to lead to the discovery of admissible evidence. SDCL § 15-6-26(b)(1). In addition, the Commission must find there is good cause to order production of information sought on a motion to compel. ARSD 20:10:01:22:01.

The substantive standards the Commission must utilize in considering NAT's application for a certificate of authority are contained in ARSD 20:10:24:02, ARSD 20:10:32:03, and ARSD 20:10:32:06. There is nothing in any of these rules that in any way implicates Sprint's internal business information or business practices, or that makes such information relevant to the Commission's determination. All of these standards are focused on the applicant, which is NAT. NAT's argument that it should be entitled to the same discovery that the intervenors obtain is utterly unsupported by the rules.²

In addition, Sprint did respond in part to NAT's requests, stating "Sprint does not believe that it delivers calls directly to any entity offering free or nearly free chat or conference services in South Dakota." (Response to Data Request 1.) As a result, all of

² In a meet and confer discussion, counsel for NAT suggested this information should be provided to the extent Sprint was seeking to prevent a competitor from entering the market. While Sprint disagrees with NAT's premise, it also points out that Sprint is not certificated to provide local exchange service on the Crow Creek Reservation, and so NAT is not seeking to provide such services in competition with Sprint.

the requests that seek to probe Sprint's relationships with call connection companies are based on the false premise that Sprint is engaged in traffic pumping in South Dakota.

NAT's own Direct Testimony in this case provides compelling evidence that Sprint's financial information is not relevant to the case. There is nothing in its testimony (or its Application) that suggests it needs Sprint's financial information to prove its entitlement to a certificate. And, because nothing in Mr. Farrar's Response testimony relies on Sprint's financial information, and NAT is limited in its Rebuttal testimony to addressing matters first raised in Response testimony, there is no way for this information to come into the record. As such, the information is not relevant.

C. Many Requests are Patently Over Broad and Unduly Burdensome.

In addition, many of the discovery requests are patently over broad and unduly burdensome. Whereas, Sprint asked for information focused solely on NAT's operations on the Reservation in South Dakota, NAT has asked for business and financial information with respect to Sprint's nationwide operations. Sprint has already documented in case TC09-098 the burden associated with identifying custodians, doing electronic searches, and providing broad discovery on many of the topics within NAT's requests. In an abundance of caution, Sprint is filing the Confidential Affidavit of Sonya Thornton ("Thornton Aff.") in this matter in support of its claims and assertions of burden. In short, in an electronic discovery context, it costs approximately \$20,000 to collect, review, and produce documents for each necessary custodian. *See* Thornton Aff.

¶ 13. In addition, conducting searches broadly related to traffic pumping or access charges would produce an extraordinary number of documents – far in excess of what

would be reasonable considering that Sprint is simply an intervenor in this case. *See* Thornton Aff. ¶ 12. identified Given the utter lack of relevance to this case, the burden of responding to these requests outweighs any purported benefit.

CONCLUSION

For the above reasons, Sprint respectfully requests that the Commission deny NAT's motion to compel.

Dated: April 13, 2012

BRIGGS AND MORGAN, P.A.

s/Philip R. Schenkenberg

Philip R. Schenkenberg
Scott G. Knudson
80 South Eighth Street
2200 IDS Center
Minneapolis, MN 55402
(612) 977-8400
(612) 977-8650 – fax
pschenkenberg@briggs.com
sknudson@briggs.com

WHITING LAW OFFICE

Stanley E. Whiting
142 E. 3rd Street
Winner, SD 57580
(605) 842-3373

Counsel for Sprint Communications
Company L.P.

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

**AFFIDAVIT OF SONYA
THORNTON**

PUBLIC

from other employees upon whom I regularly rely in the ordinary course of business, and information obtained from counsel and my general knowledge of the business practices of Sprint.

3. Sprint originally collected and prepared to produce documents to Northern Valley for purposes of the first federal court case, Case No. Civ. 08-1003-KES, pending in Federal Court in the District of South Dakota. At that time, the parties had entered into an agreement regarding the retention, collection and production of electronically stored information ("ESI") for the purpose of that case. A copy of the parties' ESI Agreement is attached as Exhibit A to this Affidavit.

4. Over the course of case, Kroll was directed to conduct queries with respect to document collection from the following list of custodians:

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

REDACTED

The search terms that were used were designed to obtain documents identifying Northern Valley in some way:

“Northern Valley”
“Aberdeen”
“James Valley”
“Groton”
“Global Conferenc*”
“GCP”
“South Dakota”

5. Records provided to me by Kroll indicate that this search resulted in approximately [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] with the inclusion of documents that were not “hits” based on the search term list, but were “family members” of document hits. If a document hit had attachments, they were all included as “family members,” even if some or all of the attachments had nothing to do with Northern Valley.

6. Following the identification of the “hits” plus their families, there was a manual review for the purpose of 1) determining whether individual documents were relevant to discovery requests, 2) identifying privileged material, and 3) identifying for redaction other documents with carrier information deemed to be non-responsive or irrelevant to the request. This process – including redactions for non-privilege reasons – was contemplated by the parties’ ESI Agreement. Exhibit A, p. 4. During this process, documents that were members of families were reviewed to determine whether they were responsive.

7. This manual review resulted in many documents being prepared for production, some redactions for privileged material, and some redactions to cover-up non-responsive information from the production. This is consistent with Sprint’s standard practice.

REDACTED

8. This production was not made in the initial federal court case because the case was stayed. I understand that in early 2010, the parties agreed in this case to exchange the federal document productions that had been prepared but not produced. To do this Sprint simply finalized the process described above consistent with the protocols employed for the federal court case.

9. I understand that in September of 2011, the Commission approved a procedural schedule that indicated Sprint should produce spreadsheets in unredacted native form. At that time, Kroll was directed to go back and provide to Sprint unredacted spreadsheets in native form. After Sprint produced those additional native documents, Northern Valley pointed out there were additional spreadsheets that were not included in that further production. Sprint went back to Kroll and it was determined that there was an error in the search protocol used by Kroll that caused certain file extensions to be left out of the search, resulting in an incomplete supplemental production. That error was fixed and spreadsheets within that prior production have now been produced in unredacted form.

10. I understand Northern Valley has now asked that all redactions (other than privilege) be removed from non-spreadsheets within Sprint's prior production. These confidential redactions were made to protect the disclosure of irrelevant and non-responsive documents and information, as contemplated by the parties' ESI Agreement in the federal court case. If Sprint were required to redo its federal court production without those redactions, that would result in disclosure of information Sprint had previously determined was neither responsive nor relevant.

11. In addition, if Sprint were required to redo its entire production without confidential redactions, it would still be required to manually review all of the newly unredacted

documents to determine whether there was privileged information within the confidential redactions. Based on the number of documents, and my experience, this process of redoing Sprint's production in this way would cost Sprint between **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] This number does not include the time and expense associated with review and preparation for production by Sprint's legal department and outside counsel of record.

12. I have reviewed Northern Valley's Document Request No. 1. This is an extraordinarily broad request. Sprint directed Kroll to identify the number of hits that would be generated if Sprint were required to redo its electronic production by using an expanded list of search terms designed to reach all documents related to traffic pumping or any case like this. Based on just a 5 custodian sample, Kroll reports this would generate approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** non-duplicated document hits. When family members are added for review, this amount will typically triple the review set. (These results would increase if additional custodians were considered.) As noted above, these documents would then have to be manually reviewed for responsiveness and privilege before being produced.

13. Based on our experience in prior litigation, including prior access pumping litigation, we estimate it costs the company approximately \$20,000 per custodian (assuming 5 GB of data per custodian) to conduct the data collection, execute a search, conduct the necessary manual review for responsiveness and privilege and produce the data in the agreed upon format. This number may be higher or lower depending on the amount of data on an individual's computer, and would be higher if very broad search terms are employed. Sprint includes this

information in the event Northern Valley seeks to expand the custodian list beyond the individuals identified above.

AFFIANT SAYS NOTHING FURTHER.

Sonya L. Thornton
Sonya Thornton

Subscribed and sworn to before me
this 7th day of March, 2012.

Andrea Y. Rowley
Notary Public

4508348v3 My Commission Expires October 31, 2015



Confidential

In Separate Sealed Envelope

Pages 1030-1036

CERTIFICATE OF SERVICE

The undersigned certifies that on this 13th day of April, 2012, copies of:

1. Sprint Communications Company L.P.'s Memorandum in Opposition to NAT's Motion to Compel;
2. Affidavit of Sonya Thornton – Public Version; and
3. Affidavit of Sonya Thornton – Confidential Version.

were served via email to:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
karen.cremer@state.sd.us

Mr. Chris Daugaard
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
chris.daugaard@state.sd.us

Mr. Scott R. Swier - Representing: Native American Telecom, LLC
Attorney at Law
Swier Law Firm, Prof. LLC
202 N. Main St.
PO Box 256
Avon, SD 57315
scott@swierlaw.com

BRIGGS AND MORGAN

Mr. Jeff Holoubeck
President
Native American Telecom, LLC
253 Ree Circle
Fort Thompson, SD 574339
jeff@nativeamericantelecom.com

Mr. William VanCamp - Representing: AT&T Communications of the Midwest,
Inc.
Attorney
Olinger, Lovald, McCahren & Reimers, P.C.
117 East Capitol
PO Box 66
Pierre, SD 57501-0066
bvancamp@olingerlaw.net

Mr. Richard D. Coit
SDTA
PO Box 57
Pierre, SD 57501-0057
richcoit@sdtaonline.com

Ms. Meredith A. Moore - Representing: Midstate Communications, Inc.
Cutler & Donahoe, LLP
100 N. Phillips Ave., 9th Floor
Sioux Falls, SD 57104-6725
meredithm@cutlerlawfirm.com

Mr. Jason D. Topp
Corporate Counsel
Qwest Corporation dba CenturyLink
200 S. Fifth St., Room 2200
Minneapolis, MN 55402
jason.topp@centurylink.com

Mr. Todd Lundy
Qwest dba CenturyLink Law Department
180 1 California Street, #1000
Denver, CO 80202
todd.lundy@centurylink.com

BRIGGS AND MORGAN

Mr. Thomas J. Welk - Representing: Qwest dba CenturyLink
Boyce Greenfield Pashby & Welk LLP
101 N. Phillips Ave., Ste. 600
Sioux Falls, SD 57117-5015
tjwelk@bgpw.com

Mr. Christopher W. Madsen - Representing: Qwest dba CenturyLink
Boyce Greenfield Pashby & Welk LLP
101 N. Phillips Ave., Ste. 600
Sioux Falls, SD 57117-5015
cwmadsen@bgpw.com

/s/ Philip R. Schenkenberg
Philip R. Schenkenberg