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April 11, 2012

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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 Response to Native American Telecom, LLC's Statement of Undisputed Facts;
2. Sprint Communications Company L.P.'s Opposition to Native American Telecom, LLC's Motion for Summary Judgment;
3. Affidavit of Randy G. Farrar in Opposition to Native American Telecom, LLC's Motion for Summary Judgment; and
4. Affidavit of Philip R. Schenkenberg in Opposition to Native American Telecom, LLC's Motion for Summary Judgment.

By copy of same, the parties have been served.

BRIGGS AND MORGAN

Patricia Van Gerpen  
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If you have any questions, please contact me.

Very truly yours,

*/s/ Philip R. Schenkenberg*

Philip R. Schenkenberg

PRS/smo  
Enclosures  
cc: Service List

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 11th day of April, 2012, copies of:

1. Sprint Communications Company L.P.'s Response to Native American Telecom, LLC's Statement of Undisputed Facts;
2. Sprint Communications Company L.P.'s Opposition to Native American Telecom, LLC's Motion for Summary Judgment;
3. Affidavit of Randy G. Farrar in Opposition to Native American Telecom, LLC's Motion for Summary Judgment; and
4. Affidavit of Philip R. Schenkenberg in Opposition to Native American Telecom, LLC's Motion for Summary Judgment.

were served via email to:

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/s/ Philip R. Schenkenberg  
Philip R. Schenkenberg

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 COMMUNICATIONS  
COMPANY L.P.'S RESPONSE TO  
NATIVE AMERICAN TELECOM,  
LLC'S STATEMENT OF  
UNDISPUTED FACTS**

1. On October 11, 2011, NAT filed its Application for Certificate of Authority ("Application") with the South Dakota Public Utilities Commission ("Commission").

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

3. Exhibit B to this Application contains a listing of NAT's key management personnel. (Application-Exhibit B).

SPRINT'S RESPONSE: Sprint does not dispute that Exhibit B to NAT's Revised Application purports to be a listing of NAT's key management personnel, but Sprint has put forth facts showing that David Erickson is also one of NAT's key management personnel. *See* Direct Testimony of Randy Farrar ("Farrar Direct"), pp. 9-19 (NAT is a sham entity being run for the benefit of David Erickson and his companies).

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

SPRINT'S RESPONSE: Sprint does not dispute that Exhibit C to NAT's Revised Application contains certain confidential financial information that NAT represents as

being accurate and complete. However, as explained in Sprint's Memorandum in Support of its Motion to Compel, and as described by Mr. Farrar, the information is neither complete nor accurate, and NAT has refused to provide discovery with respect to its representations regarding its financial qualifications. Sprint's Mem. in Supp. of Motion to Compel, pp. 11-17; Farrar Direct, p. 26.

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).

SPRINT'S RESPONSE: Undisputed.

6. NAT's Response Data 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).

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed. Sprint notes that these responses are not part of the record as they were not filed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT's Revised Application was deemed complete by Staff, and the matter sent to hearing, but denies the information contained therein is true, complete or accurate, for the reasons described by Mr. Farrar in his Direct Testimony and in Sprint's Motion to Compel. Farrar Direct, pp. 9-19, 26; Sprint's Mem. in Supp. of Motion to Compel, pp. 7-11, 11-17, 17-23. Sprint also disputes this statement as inconsistent with the rule governing summary judgment, which requires each material fact to be in a separate paragraph. SDCL § 15-6-56(c)(1). NAT's paragraph 11 is the equivalent of dozens of factual representations not identified with particularity. In addition, Sprint disputes this statement because it is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c). None of the facts in the Revised Application were verified, and many were not addressed in testimony. They lack an "appropriate citation to the record," and the record lacks evidence that those statements are true. SDCL § 15-6-56(c)(1).

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).

SPRINT'S RESPONSE: Undisputed.

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 -").

SPRINT'S RESPONSE: Undisputed.



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).

SPRINT'S RESPONSE: Sprint does not dispute that NAT is owned in part by the Crow Creek Sioux Tribe, but claims NAT is a sham entity being operated for the purpose of benefiting Dave Erickson and his companies. *See Farrar Direct*, pp. 9-19.

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

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

18. NAT's Federal Tax Identification Number is 26-3283812. (Revised Application, page 12; Holoubek Testimony, page 12).

SPRINT'S RESPONSE: Undisputed.

19. NAT's South Dakota sales tax number is 1012-1173-ST. (Revised Application, page 12; Holoubek Testimony, page 12).

SPRINT'S RESPONSE: Undisputed.

20. NAT's ownership structure consists of the Crow Creek Sioux Tribe (51%) ("Tribe"), P.O. Box 50, Fort Thompson, South Dakota 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).

SPRINT'S RESPONSE: Sprint does not dispute this is the ownership structure set forth in the joint venture agreement, but denies that the Tribe is effectively an "owner" exercising the rights normally held by one with 51% ownership. See Farrar Direct, pp. 9-19.

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).

SPRINT'S RESPONSE: Undisputed.

22. NAT Enterprise is a telecommunications development company. (Revised Application, page 3).

SPRINT'S RESPONSE: This statement of fact is not verified or otherwise supported by sworn testimony. It therefore lacks "an appropriate citation to the record" and does not establish an undisputed fact for purposes of summary judgment. SDCL § 15-6-56(c)(1).

23. WideVoice is a telecommunications engineering company.

SPRINT'S RESPONSE: This statement of fact is not verified or otherwise supported by sworn testimony. It therefore lacks "an appropriate citation to the record" and does not establish an undisputed fact for purposes of summary judgment. SDCL § 15-6-56(c)(1).

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

SPRINT'S RESPONSE: Sprint disputes this statement. Sprint has proffered evidence that NAT was established and is being operated as a traffic pumping entity, and does not intend to provide facilities-based telephone service to compliment its advanced

broadband services. *See* Farrar Direct, pp. 9-19; Sprint's Mem. in Supp. of Motion to Compel, pp. 7-11.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT claims it will provide service through its own facilities. However, NAT has refused to provide discovery with respect to these representations. *See* Sprint's Mem. in Supp. of Motion to Compel, pp. 17-23 (Interrogatories 5, 6, 7, 18, 24, 43 and 44). In addition, NAT has failed to identify how it will provide intrastate interexchange service, and has not identified any facilities that would be used to do so. *See* Revised Application, pp. 2-12 (providing information called for by ARSD 20:10:32:03, but not ARSD 20:10:24:02).

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT is currently interconnected with Midstate. Sprint denies that NAT is currently connected to "other carriers" based on NAT's refusal to identify such other carriers. *See* Sprint's Mem. in Supp. of Motion to Compel, p. 20 (Interrogatory No. 23).

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).

SPRINT'S RESPONSE: Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, p. 21 (Interrogatory No. 24).

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

SPRINT'S RESPONSE: Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).

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).

SPRINT'S RESPONSE: Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).

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).

SPRINT'S RESPONSE: Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint disputes this statement because it is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Revised Application was not verified. Sprint also disputes this statement because NAT's response to Staff Request 1-3 (Exhibit A hereto) indicates that NAT cannot provide Enhanced 911 in compliance with all rules and regulations, and cannot currently offer TRS.

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).

SPRINT'S RESPONSE: Sprint has no basis to dispute NAT's representation that it will, in the future, target its direct marketing efforts to only those individuals and organizations within the Reservation. However, the entity receiving the most calls through NAT is not an individual or organization within the Reservation, and Sprint expects this will continue.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

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](http://www.NativeAmericanTelecom.com). (Revised Application, page 11; Holoubek Testimony, page 12).

SPRINT'S RESPONSE: Sprint has no basis to dispute that NAT intends to post its rates, terms and conditions.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Disputed. *See supra* ¶ 14 (regarding NAT's statement that it is a Tribally-owned telecommunications carrier. Sprint does not dispute that NAT is currently providing service on the Reservation.

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).

SPRINT'S RESPONSE: Sprint disputes this statement because Jeff Holoubek has failed to establish he has personal knowledge of the statement made and thus there is no "appropriate citations to the record." SDCL § 15-6-56(c)(1). Mr. Holoubek is not a member of the Tribe and was not associated in any way, to Sprint's knowledge, with the Tribe in 1997 or 2008. Nor has NAT produced any documentation to support this assertion.

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).

SPRINT'S RESPONSE: Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to the operations of the Tribal Utility Authority. *See* Sprint's Mem. in Support of Motion to Compel p. 8 (Interrogatory No. 22).

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).

SPRINT'S RESPONSE: Sprint does not dispute that the order contains those words, but denies the statement on the basis that NAT has refused to provide Sprint discovery with respect to the operations of the Tribal Utility Authority. *See* Sprint's Mem. in Support of Motion to Compel, p. 8 (Interrogatory No. 22).

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT currently provides service on the Reservation. Sprint denies that this is pursuant to the Approval Order on the basis that NAT has refused to provide Sprint discovery with respect to the operations of the Tribal Utility Authority. *See* Sprint's Mem. in Support of Motion to Compel, p. 8 (Interrogatory No. 22).

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to the identification and location of telecommunications equipment and telecommunications towers. *See* Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).

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



SPRINT'S RESPONSE: Disputed. NAT's representative testified in March 2011 that the training facility (the Learning Center) was not yet opened. *See* Farrar Direct, Ex. 4 p. 159. Sprint asked NAT in discovery when it opened its training facility and NAT refused to answer. NAT's Response to Sprint's Interrogatory no. 32.

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).

SPRINT'S RESPONSE: Sprint denies this statement on the basis that NAT has refused to provide Sprint discovery with respect to these alleged residential and business users. *See* Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

65. Jeff Holoubek ("Holoubek") is NAT's acting president. (Application-Exhibit B; Holoubek Testimony, page 2).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to its finances. *See* Sprint's Mem. in Support of Motion to Compel, pp. 11-17.

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).

SPRINT'S RESPONSE: Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to its finances. *See* Sprint's Mem. in Support of Motion to Compel, pp. 11-17.

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

SPRINT'S RESPONSE: Sprint denies this statement on the basis that NAT has refused to provide Sprint discovery with respect to its ability to obtain additional financing. *See* Sprint's Mem. in Support of Motion to Compel, p. 16 (Document Request No. 2).

Dated: April 11, 2012

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

*s/Philip R. Schenkenberg*

Philip R. Schenkenberg

Scott G. Knudson

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Counsel for Sprint Communications  
Company L.P.

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- 1-3) Please provide confirmation that the applicant will meet the service obligations imposed by ARSD 20:10:32:10.

*In addition to typical exchange and interexchange voice calling services, NAT provides the following:*

- \* *911 Emergency Services - NAT provides "non-enhanced" 911 services to the respective, Tribal Law enforcement Authority per tribal area. This services is conducted via a "fixed, call forwarding" scenario where NAT accepts dialed, 911 calls and then translates and delivers each call to the above mentioned law enforcement entity.*
- \* *Operator Services - At this time NAT does not offer "0+" operator services as NAT believes that NAT's retail, residential and small business, voice service offering which treats all NANPA destination calls as local, negates the need for operator assistance.*
- \* *Directory Services - NAT provides Directory Assistance services via "free411.com". Each dialed, 411 call from NAT subscribers is translated and delivered to the Free 411 line of 800-373-3411.*
- \* *Telecommunications Relay Service (TRS) - Presently, NAT does not offer TRS. NAT is reviewing prospective vendors and expects to implement this service in 2012.*
- \* *White Page, Yellow Page Listing - Presently, NAT does not offer white page or yellow page listing of subscriber telephone lines.*
- \* *Unlisted Directory Number - Because NAT, does not list NAT subscriber numbers in any white page or yellow page directly, each NAT subscriber number is "inherently unlisted".*

- 1-4) Please provide details on how the applicant will comply with ARSD 20:10:32:11.

*The Company's local calling area will be no less than the ILEC's local calling area.*

- 1-5) Does Native American Telecom, LLC, Inc. intend to charge switched access rates to other long distance providers? If so, the Commission needs to review and approve the switched access tariff.

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 COMMUNICATIONS  
COMPANY L.P.'S OPPOSITION  
TO NATIVE AMERICAN  
TELECOM, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

**INTRODUCTION**

Sprint Communications Company L.P. ("Sprint") respectfully opposes Native American Telecom, LLC's ("NAT") motion for summary judgment. Through the direct testimony of Randy Farrar, and in arguments on its motion to compel, Sprint has identified numerous disputes of fact with respect to NAT's compliance with the requirements that apply to an application or a certificate. In addition, NAT cannot obtain summary judgment on matters for which it has refused to provide discovery responses.

**A. STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law." SDCL § 15-6-56(c). All reasonable inferences drawn from the facts must be construed in favor of the nonmoving party, *Rehm v. Lenz*, 547 N.W.2d 560, 564 (S.D. 1996), while the moving party must show the absence of any genuine issue of material fact. *Wilson v. Great N. Ry. Co.*, 83 S.D. 207, 212 (1968).

When a party does not possess facts it would use to defeat summary judgment due to an inability to obtain discovery, the Commission may deny the motion on that basis. SDCL § 15-6-56(f). This rule prevents a party like NAT from making assertions on summary judgment, refusing to provide discovery with respect to those assertions, and yet claiming it is entitled to judgment as a matter of law.

**B. STANDARD FOR A CERTIFICATION**

The Commission has jurisdiction to authorize the provision of intrastate telecommunication services. SDCL § 49-31-3. By law, an applicant for such authority has the burden to prove that it has “sufficient technical, financial and managerial capabilities to offer the telecommunications services described in its application before the commission may grant a certificate of authority.” SDCL § 49-31-3. The Commission’s rules impose this same burden on the applicant, which, in this case, is NAT. ARSD 20:10:32:05. *See also* SDCL § 49-31-71.

The Commission’s rules establish certain specific information the Commission must examine to determine whether an applicant has “sufficient technical, financial and managerial capabilities” to obtain the requested authority. *See* ARSD 20:10:32:03 (standards for application for local service authority); ARSD 20:10:24:02 (standards for applicant for interexchange service authority). The Commission is then charged with examining the information under the followings standards:

Rejection of incomplete application -- Decision criteria for granting a certificate of authority. A certificate of authority to provide local exchange service may not be granted unless the applicant establishes sufficient technical, financial, and managerial ability to provide the local exchange services described in its application consistent with the requirements of this



chapter and other applicable laws, rules, and commission orders. If an application is incomplete, inaccurate, false, or misleading, the commission shall reject the application. In determining if an applicant has sufficient technical, financial, and managerial capabilities and whether to grant a certificate of authority for local exchange services the commission shall consider:

- (1) If the applicant has an actual intent to provide local exchange services in South Dakota;
- (2) Prior experience of the applicant or the applicant's principals or employees in providing telecommunications services or related services in South Dakota or other jurisdictions, including the extent to which that experience relates to and is comparable to service plans outlined in the filed application;
- (3) The applicant's personnel, staffing, equipment, and procedures, including the extent to which these are adequate to ensure compliance with the commission's rules and orders relating to service obligations, service quality, customer service, and other relevant areas;
- (4) The nature and location of any proposed or existing facilities which the applicant intends to use in providing local exchange services;
- (5) If the applicant intends to resell local exchange services or enter into facility arrangements with other telecommunications carriers, when the necessary arrangements will be in place;
- (6) The applicant's marketing plans and its plan and resources for receiving and responding to customer inquiries and complaints;
- (7) If the applicant has sufficient financial resources to support the provisioning of local exchange service in a manner that ensures the continued quality of telecommunications services and safeguards consumer and public interests;
- (8) If the applicant, in providing its local exchange services, will be able to provide all customers with access to interexchange services, operator services, directory assistance, directory

listings, and emergency services such as 911 and enhanced 911;

- (9) If the applicant is seeking authority to provide local exchange services in the service area of a rural telephone company, if the applicant's plans for meeting the additional service obligations imposed in rural telephone company service areas pursuant to § 20:10:32:15 are adequate and demonstrate that the applicant will in fact meet such obligations;
- (10) The extent to which the applicant, applicant's affiliates, or applicant's principals have been subject to any civil, criminal, or administrative action in connection with the provisioning of telecommunications services; and
- (11) Any other factors relevant to determining the applicant's technical, financial, and managerial capability to provide the services described in the application consistent with the requirements of this chapter and other applicable laws, rules, and commission orders.

ARSD 20:10:32:06 (emphasis added).<sup>1</sup>

And NAT seems to understand, it bears the burden on summary judgment as both the applicant and the movant of proving that it meets every one of these standards in order for its motion to be granted.

**C. THERE ARE DISPUTES OF FACT AS TO NAT'S COMPLIANCE WITH THE CERTIFICATION STANDARDS**

**1. Sprint Properly Disputes Many of NAT's Statements of Fact**

As set forth on Sprint's Response to Native American Telecom, LLC's Statement of Undisputed Facts, Sprint has disputed numerous of NAT's statements of fact, and has done so with appropriate citations to the record. These disputes are material, as they all

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<sup>1</sup> NAT's argument that the Commission does not carefully and thoughtfully regulate entry of new carriers into the intrastate market is clearly wrong. See NAT Mem. pp. 21-24.

relate to matters the Commission is required to consider. Sprint incorporates that document herein by reference.

**2. Mr. Farrar's Testimony Identifies Issues of Disputed Facts With Respect to NAT's Compliance With the Certification Standards**

Sprint's witness, Randy Farrar, has presented evidence that there are material disputes of fact with respect to NAT's compliance with the standards for certification.

These fall into three categories:

- \* NAT's Application should be denied because it has been operating unlawfully, without a certificate. Direct Testimony of Randy Farrar ("Farrar Direct"), pp. 7-9.
- \* NAT does not meet the standards for certification because it is a sham entity. Farrar Direct, pp. 9-19.
- \* Nat's finances show that NAT is not a viable business entity, and thus does not have sufficient financial resources. Farrar Direct, pp. 19-28.

Mr. Farrar's testimony and the exhibits thereto, create disputes of fact that prevent the entry of summary judgment.

**3. Sprint's Motion to Compel Identifies Material Disputes of Fact With Respect to NAT's Compliance with the Certification Standards**

Sprint's Motion to Compel raises additional issues not contained within Mr. Farrar's testimony. For example, Sprint has pointed out that NAT has not identified all facilities that will be used in providing service. The application does not describe how or where calls will be switched, nor is that addressed in testimony. Sprint's Mem. in Supp. of Motion to Compel, pp. 18-19, 21-23 (discussing Interrogatory Nos. 5, 6, 7, 23, 24, 29, 43, and 44). This lack of information renders the application incomplete and prevents entry of summary judgment. In addition, NAT's application is incomplete to the extent it

fails to explain in any way how NAT will provide intrastate interexchange service, even though it has asked for that authority. *Id.* p. 20 (discussing Interrogatory No. 18).

These create additional disputes of fact that prevent the entry of summary judgment.

**4. Many of NAT's Statements of Fact Lack Appropriate Record Citation**

SDCL § 15-6-56(c)(1) requires a movant to make an "appropriate citation to the record" with respect to all statements of material fact. SDCL § 15-6-56(e) requires that affidavits be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. Many of NAT's statements of facts contain numerous statements that are not supported by any sworn testimony, or other "appropriate" citation to the record. Citations to the application, which was not verified, are not admissible in evidence and do not form the basis for a finding of fact. In addition, statements in testimony that are beyond the personal knowledge of the affiant likewise cannot be considered undisputed on this motion.

For the above reasons, there are disputes of fact with respect NAT's Statements of Fact 7, 11, 22-24, 33, 45, and 55-64.

**5. Sprint's Inability to Obtain Discovery Prevents the Entry of Summary Judgment**

As noted above, South Dakota law prevents a party from being penalized when the opposing party has refused to provide discovery on matters relevant to summary judgment. SDCL § 15-6-56(f). As is set forth in Sprint's motion to compel and

memorandum in support thereof (which are incorporated herein by reference), and confirmed in the April 10, 2012 Affidavit of Philip R. Schenkenberg filed herewith, NAT has failed to provide any meaningful discovery with respect to its operations, its finances, and its facilities. Under these circumstances, it would be contrary to South Dakota law and patently unfair, to allow NAT to obtain summary judgment. NAT must either provide the discovery and allow the intervenors and the Commission to test the statements made in the application, or it should withdraw its application altogether.

### CONCLUSION

For the above reasons, Sprint respectfully requests the Commission deny NAT's motion for summary judgment.

Dated this 11th day of April, 2012.

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

*s/Philip R. Schenkenberg*

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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  
RANDY G. FARRAR IN  
OPPOSITION TO NATIVE  
AMERICAN TELECOM, LLC'S  
MOTION FOR SUMMARY  
JUDGMENT**


STATE OF KANSAS     )  
  ) ss  
COUNTY OF JOHNSON )

Randy G. Farrar, being first duly sworn, states as follows:

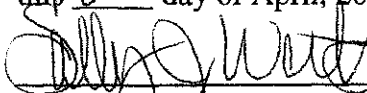
1. I am the Senior Manager – Policy Support for Sprint United Management, the management subsidiary of Sprint Nextel Corporation. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251. I make this affidavit in opposition to Native American Telecom, LLC's ("NAT") motion for summary judgment.

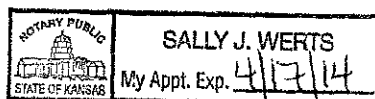
2. I prepared the Direct Testimony of Randy Farrar, filed in the above matter. If called to provide sworn testimony in response to the questions contained therein, my answers would be the same as set forth therein.

AFFIANT SAYS NOTHING FURTHER.

  
Randy G. Farrar

Subscribed and sworn to before me  
this 6th day of April, 2012.

  
Notary Public



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.

Docket No. TC11-087

**AFFIDAVIT OF  
PHILIP R. SCHENKENBERG IN  
OPPOSITION TO NATIVE  
AMERICAN TELECOM, LLC'S  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF MINNESOTA )  
  ) ss  
COUNTY OF HENNEPIN)

Philip R. Schenkenberg, being first duly sworn, states as follows:

1. I am a shareholder at the firm of Briggs and Morgan P.A. and am one of the lawyers for Sprint Communications Company L.P. ("Sprint") in the above matter. I make this affidavit in opposition to Native American Telecom, LLC's ("NAT") motion for summary judgment, and in accordance with SDCL § 15-6-56(f).

2. For the reasons set forth within Sprint's Memorandum in Support of Motion to Compel filed on April 2, 2012, Sprint is unable to present all facts by affidavit that would allow Sprint to fully oppose NAT's motion for summary judgment.

AFFIANT SAYS NOTHING FURTHER

  
Philip R. Schenkenberg

Subscribed and sworn to before me  
this 10<sup>th</sup> day of April, 2012.

  
Notary Public

