

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE:

Docket No. TC10-026

SPRINT COMMUNICATIONS
COMPANY L.P.,

Complainant,

v.

NATIVE AMERICAN TELECOM,
LLC,

Respondent.

**REPLY MEMORANDUM OF
SPRINT COMMUNICATIONS
COMPANY, L.P.**

In January of this year, Sprint Communications Company, L.P. (“Sprint”) served discovery on Native American Telecom, LLC (“NAT”). NAT responses were due March 7. As shown in Sprint’s opening brief, NAT’s counsel represented that NAT would respond to at least some of the discovery by the end of March. But NAT produced nothing. That refusal, however, did not prevent NAT’s counsel from arguing to this Commission on April 5, 2011, at the hearing on NAT’s motion to stay, that “we should move forward with discovery” so the Commission could rule on NAT’s still pending motion to dismiss. Notwithstanding that representation, NAT refused to respond to any of Sprint’s discovery and continues to dishonor its promises and representations to Sprint and to this Commission.

NAT now argues that Sprint's complaint against NAT is moot because NAT has filed for a Certificate of Authority to operate as a competitive local exchange carrier within the study area of the incumbent local exchange carrier, Midstate Communications. That assertion is unfounded. Sprint's case is very much alive, and it is entitled to responses to the discovery it propounded in January.

The mere fact NAT now seeks authority from the Commission does not moot Sprint's case because the Commission may, indeed should, deny NAT's application. NAT apparently continues to operate in South Dakota without authority and has been illegally billing Sprint and almost certainly numerous other interexchange carriers for over two years for intrastate terminating access charges. Those bills will continue to accrue during the next several months or longer it will take for the Commission to rule on NAT's application.¹

Sprint challenged NAT's activities in this state because Sprint believed that NAT was operating an unlawful traffic pumping scheme. Sprint's discovery was largely directed at establishing NAT's traffic pumping arrangements.² Sprint also sought to establish that NAT was

¹ Besides Sprint, Midstate Communication, AT&T Communications of the Midwest and SDTA have petitioned to intervene as full parties.

² A copy of Sprint's discovery is attached as Exhibit 1 to the Affidavit of Scott G. Knudson.

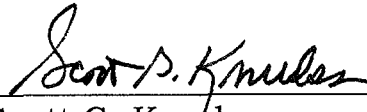
serving non-members of the Crow Creek Sioux Tribe and operating outside the boundaries of the Crow Creek Sioux Reservation. In its complaint Sprint sought a declaration that NAT was operating illegally within South Dakota and that NAT was not allowed to bill Sprint for its putative terminating access services. It is still entitled to that declaration.

NAT has flouted South Dakota law and Commission rules since it started operations in 2009. Accepting NAT's mootness claim will reward it for its contumacious conduct. By stonewalling for so long, NAT has waived any right to object to Sprint's discovery on any grounds. The Commission should thus order NAT to produce full and complete discovery responses immediately and take into consideration NAT's conduct in this docket when determining NAT's fitness to receive a Certificate of Authority in TC 11-087.

Respectfully submitted,

Dated: October 31, 2011

BRIGGS AND MORGAN, P.A.



Scott G. Knudson
Philip R. Schenkenberg
2200 IDS Center
Minneapolis, Minnesota 55402
(612) 977-8400

WHITING LAW OFFICE

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

TOBIN LAW OFFICES

Tom D. Tobin
PO Box 730
422 Main Street
Winner, S.D. 57580
(605) 842-2500

Counsel for Sprint
Communications Company, LP