

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 COMMUNICATIONS
COMPANY L.P.'S
MEMORANDUM IN SUPPORT
OF MOTION TO SUSPEND MAY
8, 2013 DUE DATE FOR
INTERVENOR TESTIMONY**

INTRODUCTION

Sprint Communications Company L.P. ("Sprint") submits this memorandum in support of its Motion to Suspend the May 8, 2013 Due Date for Intervenor Testimony. Sprint respectfully requests that the Commission enter an order relieving the intervenors of the obligation to file testimony on May 8, and providing that intervenors will have an opportunity to file testimony after NAT makes clear whether and how it intends to prosecute this case.

FACTS

Following NAT's unsuccessful appeal of the Commission's May 4, 2012 order, the parties and Commission staff conferred and agreed on a procedural schedule to bring the case to hearing. NAT's counsel proposed a schedule that had sufficient time for it to update and supplement its written testimony. *See* April 22, 2013, Schenkenberg Decl. Ex. A. As a result of these discussions, the Commission entered, by agreement of the parties, its January 2, 2013 Order Setting Procedural Schedule. The schedules provides:

January 18, 2013	Documents and other discovery as required by the Commission in its May 4, 2012 order shall be provided
April 1, 2013	All discovery to be completed (fact and expert)
April 8, 2013	NAT's supplemental written testimony is due
May 8, 2013	Intervenor's supplemental written testimony is due
May 29, 2013	All parties' pre-hearing motions are due
June 14, 2013	All parties' responses to pre-hearing motions are due

As set forth in Sprint's Second Motion to Compel (filed April 4, 2013), NAT did not comply with the requirement that it provide full and complete responses to Sprint's discovery requests on or before January 18, 2013. In addition, NAT did not file supplemental testimony on April 8. Instead, in its Responses to Sprint's discovery requests, NAT indicated: "Because of recent events, NAT will be submitting a revised application forthwith." *See* April 22, 2013, Schenkenberg Decl. Ex. B at 4.

On April 9, CenturyLink's counsel pointed out to Mr. Swier that NAT had missed the April 8 deadline. *See* April 22, 2013, Schenkenberg Decl. Ex. C. Mr. Swier did not follow up with the parties to explain why NAT has missed this deadline. April 22, 2013, Schenkenberg Decl. ¶ 4.

Sprint's counsel attempted to contact Mr. Swier by phone to find out NAT's intentions, but calls were not returned. April 22, 2013, Schenkenberg Decl. ¶ 5. When Sprint's counsel then followed up by email, Mr. Swier responded only by asking that all

further communications be in writing, and did not respond on any substantive issues. April 22, 2013, Schenkenberg Decl. Ex. D. Sprint's counsel immediately responded by email (again) asking what NAT's intentions are in this docket, and indicating that Sprint does not believe it should be held to a May 8 filing date under these circumstances. *Id.* NAT has not responded to that email. *Id.* ¶ 6.

ARGUMENT

Sprint has no way to know how NAT intends to proceed in this docket. At one point NAT apparently intended to supplement its testimony. Later, NAT apparently intended to file a revised Application. Now, NAT will not even respond to emails and phone calls.

Sprint has received some updated discovery information from NAT, and has a motion to compel pending. If this case goes to hearing, Sprint will incorporate some of this additional information into its prefiled testimony. But Sprint should not have to spend time and money preparing supplemental testimony when it is not even clear that NAT – the applicant – intends to proceed on the application.

Sprint thus seeks an order from the Commission suspending the May 8 testimony date pending clarification from NAT about its intentions in this docket. Sprint would have preferred to have accomplished this by stipulation, but NAT's decision not to respond to Sprint's phone calls and emails made that impossible to accomplish.

CONCLUSION

Sprint respectfully requests that the Commission grant Sprint's motion.

Dated: April 22, 2013

BRIGGS AND MORGAN, P.A.

s/Philip R. Schenkenberg

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