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 MOTION TO STRIKE NAT'S POST-HEARING REPLY MEMORANDUM AND FOR SANCTIONS**

COMES NOW, Sprint Communications Company L.P. ("Sprint"), by and through counsel of record, and moves the Commission for an order striking a portion of NAT's Post-Hearing Reply Memorandum, and imposing sanctions against NAT. In support of this Motion, Sprint states as follows:

1. On February 10, 2012, the Commission approved a Protective Order that obligated the parties to respect and maintain the confidentiality of information provided by other parties in discovery.

2. On October 16, 2013, Sprint provided copies of its settlement agreements with Northern Valley and Splitrock to NAT, in discovery. Pursuant to the Protective Order, Sprint designated these documents as "Confidential," and provided these documents only to NAT, not to other intervenors or Commission Staff, who did not object to that limitation. Affidavit of Philip R. Schenkenberg ("Schenkenberg Aff.") ¶ 2.

3. Sprint settled a separate matter with Sancom in the fall of 2011.

4. Sprint's settlement agreement with Sancom was not provided to NAT in discovery. Schenkenberg Aff. ¶ 3.

5. No Sprint settlement agreement was offered into evidence at the hearing.

6. In NAT's Post-Hearing Reply Memorandum, it made the following statement:

> Sprint recently settled its obligations to one South Dakota LEC, Sancom, after using a litigation strategy of refusing to pay – i.e. the "self help" that the FCC has declared unlawful – and then leveraging litigation to negotiate a beneficial rate. *See, e.g., Sancom, Inc. v. Sprint Communs. Co.*, 2012 U.S. Dist. LEXIS 88917, 2012 WL 2449934 (D.S.D. June 27, 2012) (emphasis added).

The cited decision with Sancom says only that the parties reached a confidential settlement.

7. Because NAT has no knowledge of the terms of the settlement between Sprint and Sancom, its representation to the Commission about a "favorable rate" is fiction. This statement was improper because 1) the information is not part of the record; 2) NAT has no knowledge of the contents of that settlement agreement; and 3) any knowledge NAT does have about Sprint's settlements is confidential, and NAT did not file its brief under seal.

8. On April 16, Sprint's counsel advised NAT's counsel of these concerns and demanded that the Reply Memorandum be withdrawn and re-filed without the offending language. Schenkenberg Aff. ¶ 4.

9. NAT has refused to re-file the brief.

10. The portion of NAT's reply brief quoted above is improper and should be struck. There is no evidence in the record about the contents of the settlement agreement, and it is improper for NAT to make factual representations beyond the record in a post-

hearing reply brief. In addition, as it currently stands, it appears that NAT is disclosing confidential settlement information by making such representations without filing under seal. Mr. Wald – like NAT's other lawyers – is well aware of the sensitivity of this information, as it was an issue that was discussed at length in Mr. Farrar's deposition. Schenkenberg Aff. ¶ 5.

11. The only just course of action is for the Commission to strike NAT's Post-Hearing Reply Memorandum and order NAT to re-file it without the offending language. This will prevent the Commission from relying on assertions that have no basis in the record, and will prevent the perception that confidential settlement information is available to the public on the Commission's docket.

12. Finally, the Commission should award Sprint its attorney's fees for bringing this motion in light of NAT's willful decision to argue facts not in the record and contrary to the Commission's Protective Order.

Dated: April 21, 2014

BRIGGS AND MORGAN, P.A.

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