

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'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.<sup>1</sup>

**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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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*

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