

**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

CONFIDENTIALITY AGREEMENT

Each Party signing below agrees as follows:

1. "Designated Material" as used herein shall mean any data, document or other material in which the "Producing Party" has a good faith basis to assert the existence of confidential, proprietary, trade secret or other information subject to protection under ARSD 20:10:01:39, and which the Producing Party conspicuously designates and marks as including such information by marking the information as "Confidential." Provided, however, that the Parties acknowledge that certain documents may have been produced in other proceedings, where the protective order provided for the designation of materials as "Confidential" or "Attorneys' Eyes Only." Accordingly, the Parties agree that materials that include the "Attorneys' Eyes Only" designation shall be recognized and treated as Designated Material without need for the Producing Party to modify its production for this proceeding. In recognition of the increased logistical difficulties to other Parties and the

Commission in handling Designated Material, the Producing Party will make reasonable efforts to narrow the scope of information so designated and will confer in good faith to further narrow the scope of information so designated upon request of the receiving Party.

2. Designated Material shall be used solely for purposes of this proceeding or any related appeal, and no person receiving such Designated Material shall, directly or indirectly, use, transfer, disclose or communicate the Designated Material for any other business, competitive, personal, private, public or other purpose whatsoever.

3. Designated Material shall not be disclosed to anyone other than the following individuals (the “Qualified Persons”):

- a. Attorneys employed by a law firm that is counsel of record for any Party in this action;
- b. Paralegal, stenographic, clerical, or other employees of counsel of record in this action;
- c. Court reporters and their employees engaged to record and transcribe testimony in this action;
- d. Independent experts and consultants employed by counsel of record in this action to assist in the preparation or trial of this action;
- e. Directors, officers, and employees, including in-house counsel of any Party in this action to the extent that disclosure of Designated Material is necessary with respect to the active participation in this proceeding by such director, officer or employee of such Party;
- f. Any witness from whom testimony is being taken during the course of his or her testimony or during the

preparation thereof provided that such witness may not retain any Designated Material;

- g. A court of other tribunal, so long as steps are taken to maintain the confidentiality of such Designated Material.

4. Information designated as confidential shall not be disclosed to persons specified in 3(d), (e) and (f) until such persons have signed a confidentiality agreement in the form that is attached hereto and incorporated herein as Exhibit A, agreeing to be bound by the terms and conditions of this Confidentiality Agreement. The Exhibit shall contain the signatory's full name, permanent address and employer, and the name of the Party with whom the signatory is associated. The completed Exhibit A then must be distributed to the Parties in this proceeding. Each Qualified Person agrees as follows: (a) not to reveal any Designated Material to anyone other than another person who meets any criteria established pursuant to paragraph (3); (b) to utilize the Designated Material solely for purposes of preparation for and conduct of this proceedings and not for any other purpose; and (c) to keep all Designated Material secure at all times in accordance with the purpose and intent of this Agreement. Where any qualified person currently has or may in the future have responsibilities for sales, marketing, product development, network planning, market analysis, market entry, or strategic planning for a competitor of any of the Parties to this action now or in the future,

that person shall take reasonable steps to limit his/her exposure to designated materials to those materials relevant to that person's testimony or involvement in this matter and it shall be made a violation of this Agreement for such person to use or rely on designated materials obtained through discovery in this case to carry out sales, marketing, product development, network planning, market analysis, market entry or strategic responsibility duties for any Party or any other entity employing the person now or in the future.

5. The protections for Designated Material do not apply to any information that (i) is or becomes publicly available without breach of this Confidentiality Agreement; (ii) can be shown by documentation to have been in the possession of or known by the Receiving Party at the time of its receipt from the Producing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortuous act; (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information; or (v) is authorized in writing by the Producing Party to be released or is designated in writing by the Producing Party as no longer being Designated Material.

6. All Designated Material shall be treated as confidential unless such status is specifically waived by the Producing Party, or the State of

South Dakota Public Utilities Commission (“SDPUC” or “Commission”) specifically finds that such material need not be so treated. All Parties shall exercise reasonable steps to safeguard the confidentiality and nondisclosure of the Designated Material.

7. Neither the Designated Material nor any summaries or compilations of the whole or any part thereof disclosed by a Producing Party to another Party’s attorneys in this case shall be revealed or distributed to anyone other than Qualified Persons to this Agreement.

8. Copies of Designated Material shall prominently bear the statement “Confidential,” “Attorneys’ Eyes Only” or otherwise clearly indicate that disclosure of the contents is prohibited. All Designated Material obtained by any Party shall be and shall remain the exclusive property of the Producing Party. All hard copies shall be returned, without further notice, to counsel for the Producing Party or, at the option of the Parties receiving the copies, destroyed at the conclusion of this proceeding, including any rehearing or appeals. In addition, all electronic copies of Designated Material must be deleted, and disks must be returned or destroyed. Notes, memoranda, or other written or recorded materials of any kind containing confidential and proprietary data or summaries or compilations of the whole or any part of any of the Designated Material shall be destroyed when no longer needed in the

conduct of this proceeding. However, in-house counsel and outside counsel of record for the Parties shall be entitled to retain a set of Designated Material and all communications generated in connection with this proceeding, which records shall include a copy of this Agreement.

9. Any reference to Designated Material filed with the SDPUC in testimony, exhibits or Briefs shall be marked to readily identify the contents as Designated Material and marked "Confidential," shall be separately filed with the SDPUC, shall be distributed only to individuals who are Qualified Persons to this Agreement and members of the Commission staff participating in this proceeding and shall be retained by the Commission under seal and not as part of the public record.

10. This Agreement establishes a procedure for permitting access to Designated Material that the Producing Parties hereto claim contains information which is confidential or proprietary or a trade secret or otherwise subject to protection under ARSD 20:10:01:39, and shall not be construed as an agreement or concession by the Parties that any document or data provided under the terms of this Agreement in fact contains confidential or proprietary or trade secret information. This Agreement does not waive any Party's rights to contest the designation of any particular document or data as containing confidential, proprietary

or trade secret information or to redact competitively sensitive material from any Designated Material.

11. It is further agreed that the Parties shall not be deemed to have waived any objections to the relevancy, materiality, or admissibility in the record of this proceeding of any of the Designated Material furnished or received pursuant to this Agreement.

12. If information subject to a claim of attorney-client privilege, work product protection, or any other privilege or immunity is inadvertently produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to any claim of privilege, work product protection or other ground for withholding production to which any Producing Party would otherwise be entitled. Any inadvertently produced privileged materials shall be returned promptly to the Producing Party upon request and all copies destroyed.

13. The inadvertent failure to identify material as Designated Material or to stamp a document as Confidential shall not be deemed a waiver of the protections afforded by this Agreement. In such event, the Producing Party shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-labeled Designated Material. Any Party receiving such improperly-labeled Designated Material shall retrieve such Designated Material from persons

not entitled to receive the information and, upon receipt of the substitute Designated Material, shall return or destroy the improperly-labeled Designated Material.

14. Any Party at any time during the course of this docket may object to the designation of any Designated Material by giving written notice to the Producing Party that it objects to the designation. Such notice shall specifically identify the Designated Material at issue and state the reasons for questioning the confidentiality, proprietary or trade secret designation. The objecting Receiving Party and Producing Party shall confer in good faith in an attempt to resolve any such dispute. If agreement is reached confirming or waiving the designation as to any documents subject to the objection, the Producing Party shall serve on all Parties a notice specifying the documents and the nature of the agreement. If the Parties are unable to resolve the dispute, the objecting Receiving Party may apply to the Commission for a ruling that the Designated Material is not appropriately designated, giving notice to the Producing Party. If such a motion is made, the Producing Party will have the burden to establish that the designation is proper under ARSD 20:10:01:42. Until the Commission rules on the motion, the documents shall be treated as Designated Material, as originally designated.

15. This Agreement shall not prevent a Party from applying to the Commission for relief therefrom, or from agreeing to modifications of this Agreement by stipulation of the Parties; or from applying to the Commission for a Protective Order.

16. A person or entity not a party to the above-captioned matter that produces documents, provides information, or provides testimony in furtherance of discovery in this case is entitled to the benefits of this Confidentiality Agreement. Such person is considered to be a “Producing Party” as that term is used herein. Such person or entity shall receive notice and be entitled to be heard on any motion before the Commission relating to its designation of material as Confidential.

17. This Agreement is binding with respect to each Party and Qualified Persons in accordance with its terms and each executed copy of this Agreement shall be deemed the original by the party executing same.

Dated this ___ day of _____, 2012.

Scott Swier
SWIER LAW FIRM PROF. LLC
202 N. Main Street
Avon, SD 57315-0256
scott@swierlaw.com

Counsel for NAT, LLC

Dated this ___ day of _____, 2012.

Stanley W. Whiting
142 E. 3rd Street
Winner, South Dakota 57580
swhiting@gwtc.net

Scott Knudson
Philip Schenkenberg
80 South Eighth Street
2200 IDS Center
Minneapolis, Minnesota 55402
sknudson@briggs.com
pschenkenberg@briggs.com

*Counsel for Sprint Communications
Company L.P.*

Dated this ___ day of _____, 2012.

Thomas J. Welk
Christopher W. Madsen
101 North Phillips Avenue, St. 600
Sioux Falls, South Dakota 57117-5015
tjwelk@bgpw.com
cwmadsen@bgpw.com

*Counsel for Qwest Communications
Company LLC, d/b/a CenturyLink*

Dated this ___ day of _____, 2012.

R. William M. Van Camp
P.O. Box 66
Pierre, SD 57501-0066
bvancamp@olingerlaw.net

*Counsel for AT&T Communications of
the Midwest, Inc.*

Dated this ___ day of _____, 2012.

Meredith A. Moore
Ryan J. Taylor
100 N. Philips Avenue, 9th Floor
Sioux Falls, South Dakota 57104-6725
meredithm@cutlerlawfirm.com
ryant@cutlerlawfirm.com

*Counsel for Midstate Communications,
Inc.*

Dated this ___ day of _____, 2012.

Richard Coit
P.O. Box 57
320 East Capitol Avenue
Pierre, South Dakota 57501-0057
richcoit@sdtanonline.com

Counsel for SDTA