

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  
RESPONSE TO NAT'S MOTION  
FOR CONTINUANCE**

Sprint does not oppose NAT's Motion for Continuance, but wishes to correct the record, as Mr. Swier's affidavit is incorrect in several respects.<sup>1</sup>

On October 29, counsel for NAT and Sprint confirmed availability for depositions on November 25 and December 5. Sprint's counsel stated:

For 11-87, I will notice Erickson/Holoubek for Nov. 25 and you can notice Farrar for Dec. 5.

Schenkenberg Aff. Ex. A. Sprint's counsel then sent notices reserving the November 25 date. *Id.* Ex. B. NAT's counsel, on the other hand, sent no notice out. *Id.* ¶ 4. The Rules of Procedure require a notice to be sent:

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action.

SDCL § 15-6-30(b). Mr. Swier's suggestion that a notice was not required is unsupported and untenable.

Mr. Swier is also wrong in asserting that the parties discussed the December 5 deposition at any time after the October 29 email exchange. To the contrary, counsel never spoke on the phone once during that period. Schenkenberg Aff. ¶ 5. Without a

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<sup>1</sup> NAT did not attempt to reach agreement on this matter before filing its motion.

notice, and without any further discussion between the parties, NAT gave up its right to hold Sprint's witness to that date, and Sprint assumed NAT did not, after all, want to spend the time and money to conduct the deposition. So, when the notice came on the eve of the holiday weekend, with Sprint's witness getting on a plane and otherwise committed the following week, Sprint so advised NAT. *See* Schenkenberg Aff. Ex. C.

Sprint does not object to NAT's request for continuance, and will make Mr. Farrar available at the earliest opportunity.

Dated: December 3, 2013

**BRIGGS AND MORGAN, P.A.**

*s/Philip R. Schenkenberg*

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