

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE COMPLAINT)
FILED BY SPRINT COMMUNICATIONS)
COMPANY, LP AGAINST NATIVE) Docket No. TC10-026
AMERICAN TELECOM, LLC)
REGARDING TELECOMMUNICATIONS)
SERVICES)**

**RESPONDENT NATIVE AMERICAN TELECOM LLC's
REPLY BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

STATEMENT OF THE ISSUE

The issue before the South Dakota Public Utilities Commission (SDPUC or Commission) is whether Respondent Native American Telecom, LLC's (NAT) Motion for Protective Order should be granted.

STATEMENT OF CASE

Pursuant to SDCL 15-6-26(c) and S.D. Admin. R. 20:10:01:01:02, NAT respectfully requests that this Commission grant NAT's Motion for Protective Order staying further discover in this matter until this Commission rules on NAT's pending Motion to Dismiss and Motion to Stay.

STATEMENT OF FACTS

On May 5, 2010, Sprint Communications Company, L.P. ("Sprint") filed its Amended Complaint in this case. Sprint's Amended Complaint seeks a judgment declaring, among other things, that (1) the Crow Creek Sioux Tribe Utility Authority lacks jurisdiction over Sprint; and (2) NAT must seek a Certificate of Authority from this Commission and file a lawful tariff with this Commission before it can assess charges for switched access service.

On June 1, 2010, NAT filed its "Motion to Dismiss" with this Commission. NAT's "Motion to Dismiss" is *still pending* before this Commission.

On July 29, 2010, NAT filed its "Motion to Stay" with this Commission. NAT's "Motion to Stay" requests that this matter be stayed until the lawsuit now being prosecuted by NAT against Sprint in Crow Creek Sioux Tribal Court ("Tribal Court") is concluded. NAT's "Motion to Stay" is also *still pending* before this Commission.

On November 15, 2010, this Commission's "Staff Brief" recommended that "[t]he Commission should take a pragmatic approach to this matter as it relates to the tribal exhaustion doctrine and *grant NAT's motion to stay* thereby permitting either the tribal court or the federal district court to resolve questions of its jurisdiction." (emphasis added).

This Commission has scheduled oral argument on NAT's two pending motions for April 5, 2011, at 9:30 a.m.

Despite the fact that NAT's two substantive motions remain pending before this Commission, on January 31, 2011, Sprint served voluminous discovery requests on NAT. Sprint's discovery requests seek information that will result in NAT potentially (and possibly unnecessarily) expending tens of thousands of dollars in legal fees and costs.

On February 26, 2011, NAT contacted Sprint and inquired as to whether Sprint would be willing to proceed reasonably and "hold in abeyance" any discovery answers until this Commission rules on NAT's pending "Motion to Stay." Unfortunately, the response of Sprint's out-of-state counsel was consistent with Sprint's actions since this action was commenced – there would be no attempt to proceed in a "reasonable" way.

As a result of Sprint's actions, on March 7, 2011, NAT properly filed its "Motion for Protective Order" in this matter.

DISCUSSION OF LAW

I. Standard For A Protective Order

SDCL 15-6-26(c) provides that “[u]pon motion by a party . . . and for good cause shown, the court . . . may make an order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or *undue burden or expense*, including one or more of the following:

- (1) *That discovery not be had*”

SDCL 15-6-26(c) (emphasis added).

II. NAT’s Motion for Protective Order Should Be Granted

As indicated earlier, NAT’s “Motion to Dismiss” and “Motion to Stay” are *still pending* before this Commission. Oral argument on NAT’s two pending motions is scheduled for April 5, 2011. This Commission’s “Staff Brief” has already recommended that NAT’s “Motion to Stay” should be granted. If this Commission adopts the recommendation of its “Staff Brief,” this matter will first be heard in Tribal Court. As such, discovery would take place under the jurisdiction of the Tribal Court. Until this Commission rules on NAT’s pending motions, ordering discovery in this action would place an *immense undue burden and expense* on NAT’s finite resources by forcing NAT to potentially conduct discovery in two separate forums.

Until this Commission rules on the pending motions, NAT should be relieved of the time, undue burden, and undue expense involved in responding to lengthy and detailed discovery documents and other time-consuming discovery procedures. As such, NAT is entitled to the entry of an Order barring Sprint from engaging in discovery until NAT’s pending motions have been resolved by this Commission.

CONCLUSION

Compelling NAT to respond to Sprint's discovery requests before resolution of NAT's pending motions will cause undue burden and expense to NAT and will result in the unnecessary expenditure of attorney's fees and costs. Therefore, NAT's "Motion for Protective Order" should be granted.

Dated this 19th day of March, 2011.

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CERTIFICATE OF SERVICE

I, *Scott R. Swier*, certify that on *March 19th, 2011*, *Respondent Native American Telecom LLC's Reply Brief in Support of Motion for Protective Order*, was served via *electronic mail*

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