

**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 Response to Sprint's Opposition to Stay  
and Sprint's Motion to Establish Briefing Schedule**

Respondent Native American Telecom, LLC, ("NAT"), by its undersigned attorney,  
hereby responds to "Sprint's Opposition to Stay and Sprint's Motion to Establish Briefing  
Schedule":

1. On May 5, 2010, Sprint Communications Company L.P. ("Sprint") filed its Amended Complaint against NAT in this matter.
2. On June 1, 2010, NAT filed its "Motion to Dismiss" and "Motion to Establish Briefing Schedule."
3. On June 17, 2010, the South Dakota Public Utilities Commission ("SDPUC") entered its "Order Granting Intervention."<sup>1</sup>
4. On July 7, 2010, NAT filed a Complaint against Sprint with the Crow Creek Sioux Tribe – Tribal Court. This Tribal Court Complaint involves the same, if not identical, issues as alleged in the current action before the SDPUC.
5. On July 26, 2010, NAT filed its "Notice of Tribal Court Litigation" with the SDPUC.

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<sup>1</sup> The SDPUC's "Order Granting Intervention" allowed the South Dakota Telecommunications Association ("SDTA"), South Dakota Network, LLC ("SDN"), Midstate Communications ("Midstate"), AT&T Communications of the Midwest ("AT&T"), and Crow Creek Sioux Tribe Utility Authority ("CCSTUA") to participate in this matter.

6. On July 29, 2010, NAT filed its “Motion to Stay SDPUC’s Docket No. TC10-026.” This Motion requests that the proceedings in SDPUC Docket No. TC10-026 be stayed until the lawsuit now being prosecuted by NAT against Sprint in Crow Creek Tribal Court is concluded.
7. On August 3, 2010, the parties held a teleconference to discuss the briefing schedule in light of NAT’s recently-filed “Motion to Stay.” The parties were unable to reach an agreement on the order and timing of the briefing schedule.
8. NAT’s currently-pending “Motion to Stay” invokes the “Tribal Exhaustion Doctrine.”
9. Under the “Tribal Exhaustion Doctrine,” federal courts recognize that the promotion of self-government and self-determination by an Indian Tribe requires federal courts to give tribal courts “the first opportunity to evaluate the factual and legal bases for the challenge to its jurisdiction.” *Alltel Communications, LLC, v. Oglala Sioux Tribe*, 2010 WL 1999315 (District of South Dakota – Civ. 10-5011 – opinion issued May 18, 2010); *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 16 (1987).
10. The “Tribal Exhaustion Doctrine” is premised on the right of one court to resolve questions of its jurisdiction *without interference* from another court.
11. In *National Farmers Union Insurance Cos. v. Crow Tribe*, 471 U.S. 845 (1985) the United States Supreme Court held that (in a civil law context), “the existence and extent of a tribal court’s jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions.” *Id.* at 855-56.

12. The United States Supreme Court further found that the scope of a tribal court's authority ordinarily "*should be conducted in the first instance in the Tribal Court itself*" to allow "the forum whose jurisdiction is challenged the first opportunity to evaluate the factual and legal bases for the challenge" and to foster "*the orderly administration of justice in federal court . . .* by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed." *Id.* at 856 (emphasis added).
13. The SDPUC has the discretion to follow the federal courts' reasoned procedure and invoke the "Tribal Exhaustion Doctrine."
14. In this case, it is clear that the issues of "Tribal Court Exhaustion" and NAT's "Motion to Dismiss" are separate and distinct. As such, the parties' respective briefing of these complex issues should also be separate and distinct.
15. Sprint's proposal to "lump together" both the "Tribal Exhaustion Doctrine" and the "Motion to Dismiss" contradicts the entire purpose of the "Tribal Exhaustion Doctrine."
16. Further, if the SDPUC ultimately grants NAT's "Motion for Stay," Sprint's proposal to "lump together" these two distinct issues into a single highly-complex brief results in the unnecessary expenditure of resources for the parties, the SDPUC, and the SDPUC staff.
17. In light of the foregoing, NAT moves the SDPUC for an Order establishing an initial briefing schedule as follows:
  - a. Briefs in support of NAT's "Motion to Stay" to be filed on or before August 23, 2010.

- b. Briefs in opposition to NAT's "Motion to Stay" to be filed on or before September 10, 2010.
  - c. Reply briefs in support of NAT's "Motion to Stay" to be filed on or before September 17, 2010.
  - d. Staff brief in response to NAT's "Motion to Stay" to be filed on or before October 1, 2010.
  - e. Replies to Staff brief to be filed on or before October 15, 2010.
18. Although NAT objects to Sprint's proposal to "lump" these two highly-complex and distinct issues together, in the event that the SDPUC determines that both of these issues should be briefed at the same time, NAT proposes the following briefing schedule for the "Motion to Dismiss" and "Motion for Stay" issues:
- a. Briefs in support of NAT's "Motion to Dismiss" and "Motion to Stay" to be filed on or before September 6, 2010.
  - b. Briefs in opposition to NAT's "Motion to Dismiss" and "Motion to Stay" to be filed on or before September 27, 2010.
  - c. Reply briefs in support of NAT's "Motion to Dismiss" and "Motion to Stay" to be filed on or before October 11, 2010.
  - d. Staff brief in response to NAT's "Motion to Dismiss" and "Motion to Stay" to be filed on or before November 1, 2010.
  - e. Replies to Staff brief to be filed on or before November 15, 2010.

#### CONCLUSION

NAT respectfully requests that the SDPUC establish a briefing schedule as set forth above and recognize the distinct and separate issues contained in NAT's "Motion to Stay" and

NAT's "Motion to Dismiss" require separate briefing by the parties and separate consideration by the SDPUC.

Dated this 6<sup>th</sup> day of August, 2010.

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## CERTIFICATE OF SERVICE

I, *Scott R. Swier*, certify that on *August 6<sup>th</sup>, 2010*, *Respondent Native American Telecom LLC's Response to Sprint's Opposition to Stay and Sprint's Motion to Establish Briefing Schedule* was served via electronic mail upon the following:

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