

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

IN THE MATTER OF THE COMPLAINT)	
OF SOUTH DAKOTA NETWORK, LLC,)	
AGAINST SPRINT)	TC09-098
COMMUNICATIONS COMPANY LP)	
REGARDING TELECOMMUNICATIONS)	
)	
)	
IN THE MATTER OF THE THIRD)	
PARTY COMPLAINT OF SPRINT)	
COMMUNICATIONS COMPANY LP)	
AGAINST SPLITROCK PROPERTIES,)	
INC., NORTHERN VALLEY)	
COMMUNICATIONS, INC., SANCOM,)	
INC., AND CAPITAL TELEPHONE)	
COMPANY)	

**NATIVE AMERICAN TELECOM, LLC’S
MEMORANDUM IN RESPONSE TO
SPRINT’S “MOTION TO ENFORCE SUBPOENAS
AND MODIFY PROCEDURAL SCHEDULE”**

COMES NOW Native American Telecom, LLC (“NAT”), a *non-party* to the above-entitled matter, and hereby responds to Sprint Communications Company L.P.’s (“Sprint”) “Motion to Enforce Subpoenas and Modify Procedural Schedule.”

FACTS

1. In October 2009, this matter was commenced by South Dakota Network, LLC (“SDN”) against Sprint.
2. In November 2009, Sprint added Splitrock Properties, Inc. (“Splitrock”), Northern Valley Communications (“Northern Valley”), and Sancom, Inc. (“Sancom”) (collectively “South Dakota LECs”) as third party respondents.
3. Sprint’s third party complaint against the South Dakota LECs requested (1) a declaration that the South Dakota LECs cannot assess intrastate switched access charges for

calls to Call Connection Companies; and (2) an award of money damages against the South Dakota LECs. (*see* Sprint’s third party complaint, pages 6-7 – dated November 23, 2009).

4. Since this action was commenced more than two (2) years ago, the “named parties” (SDN, Sprint, Splitrock, Northern Valley, and Sancom) have engaged in extensive discovery and filed numerous dispositive motions with the South Dakota Public Utilities Commission (“Commission”).

5. Since this action was commenced more than two (2) years ago, the “named parties” have also engaged in various discovery disputes. *See* Northern Valley’s Motion to Compel Discovery (dated 05/27/11); Sancom’s Joinder in Northern Valley’s Motion to Compel Discovery (dated 06/07/11); and Sprint’s Response to Northern Valley’s Motion to Compel Discovery (dated 06/21/11).

6. *At no time has NAT been made a party to this matter.*

7. On October 6, 2011, non-party NAT voluntarily admitted service of Sprint’s “Subpoena Duces Tecum for Native American Telecom, LLC” (“Subpoena”). (*see* Sprint’s Exhibit E).

8. Sprint’s Subpoena contains twenty-nine (29) very extensive production requests that have no nexus to this docket. (*see* Sprint’s Exhibit C).

ARGUMENT

SPRINT’S SUBPOENA TO NAT – A NON PARTY IN THIS DOCKET - REQUESTS VOLUMINOUS INFORMATION THAT IS WELL BEYOND THE SCOPE OF THIS DOCKET

SDN’s amended complaint against Sprint requests the following relief – (1) payment for unpaid intrastate switched access services and late payment penalties; (2) immediate payment of the undisputed portion of the invoices; (3) SDN’s costs and expenses; and (4) pre-judgment and

post-judgment interest. (*see* SDN’s amended complaint, page 5, dated June 7, 2010). Sprint’s answer to SDN’s amended complaint denies SDN’s requests.¹ (*see* Sprint’s answer to amended complaint, dated June 21, 2010).

Sprint’s assertion that it needs voluminous information from NAT – a non-party – is simply wrong. Sprint opines that some minutes at dispute between Sprint and SDN are minutes that travel through SDN to NAT. If this is correct, Sprint can (and likely has) received these “minutes” through its discovery with SDN. Sprint also admits that it disputes the legal issue of whether certain traffic constitutes “legitimate end users of local exchange service.” (*see* Sprint’s memorandum in support of motion to enforce subpoenas and modify procedural schedule, page 5). Sprint does not need the information it has requested from NAT to dispute the issues that it has with SDN. As such, the Commission should deny Sprint’s motion to enforce its Subpoena and deny a rescheduling of the deposition of NAT’s corporate representative(s).²

Next, NAT would like to proactively confront any claim by Sprint that this information is needed to resolve the disputes between Sprint and the South Dakota LECs. Sprint’s third party complaint against the South Dakota LECs originally requested (1) a declaration that the South Dakota LECs cannot assess intrastate switched access charges for calls to Call Connection Companies; and (2) an award of money damages against the South Dakota LECs. (*see* Sprint’s

¹ Importantly, it should be noted that SDN’s “amended motion for summary judgment” is currently pending and the Commission’s resolution of SDN’s motion will likely have a substantial impact on the remaining scope of this docket. (*see* SDN’s amended motion for summary judgment, dated September 23, 2011).

² Sprint’s statement that NAT failed to follow the proper procedure to assert objections to the Subpoena must also fail. (*see* Sprint’s memorandum in support of motion to enforce subpoenas and modify procedural schedule, page 6). As Sprint admitted, the parties agreed that this exact procedure “was an appropriate way to present these discovery disputes to the Commission.” (*see* Sprint’s memorandum in support of motion to enforce subpoenas and modify procedural schedule, page 3).

third party complaint, pages 6-7, dated November 23, 2009).

On June 14, 2011, Sprint filed its “Amended Motion to Dismiss Sancom’s Cross-Claims” and “Amended Motion to Dismiss Northern Valley’s Cross-Claim.” In the briefs that accompanied these identical motions, Sprint admits that its claims against Sancom and Northern Valley are now “*specifically limited . . . to declaratory relief*” regarding the issue of whether the South Dakota LECs can assess intrastate switched access charges for calls to Call Connection Companies.³ (*see e.g.*, Sprint’s Memorandum in Support of Amended Motion to Dismiss Sancom’s Cross-Claim, page 1; Sprint’s Memorandum in Support of Amended Motion to Dismiss Northern Valley’s Cross-Claim, page 1; Sprint’s Response in Support of Motion to Dismiss Cross Claims, page 3) (emphasis added).

Finally, in its recent “Response to Northern Valley’s Motion to Compel,” Sprint sought protection from this Commission by once again emphasizing the limited scope of this docket and that it was improper for the South Dakota LECs to seek “*extensive discovery [and] take testimony.*” Sprint also noted that it “object[s] to [Northern Valley’s discovery] on several grounds – not least of which is the *enormous burden it would impose* on Sprint to produce the

³ Sprint’s third party complaint against the South Dakota LECs seeking declaratory relief (not damages), provides:

19. There is an actual controversy between Sprint [and the South Dakota LECs] with respect to whether those companies provide intrastate switched access services to calls to Call Connection Companies. The resolution of this controversy is necessary to determine whether SDN has properly billed intrastate switched access charges for those calls.

20. Sprint is entitled to a declaration pursuant to ARSD 20:10:01:34 and SDCL 21-24-1 that [the South Dakota LECs] cannot access intrastate switched access charges for calls to Call Connection Companies, and that Sprint has no access charge liability for such calls on and after June 2007, and/or that their actions constitute an unjust or unreasonable practice.

Sprint’s third party complaint, page 5.

massive amounts of information sought.” Sprint concluded by stating “[t]he Commission should deny Northern Valley’s [motion to compel] so that discovery . . . proceed[s] with respect to matters over which the Commission has jurisdiction, and *which are within the scope of the pleadings.*” (*see* Sprint’s Response to Northern Valley’s Motion to Compel, pages 1-2, 8, dated June 21, 2011) (emphasis added).

This case is limited to (1) a dispute between Sprint and SDN regarding minutes that travel through SDN to NAT and (2) Sprint’s request for declaratory relief against the South Dakota LECs. The volume of information and financial data Sprint seeks from NAT is astounding, and NAT reserves the right to submit affidavits to support its objections if the Commission overrules NAT’s resistance to Sprint’s motion to enforce its Subpoena. (*see also* Sprint’s Response to Northern Valley’s Motion to Compel, page 9, dated June 21, 2011).

Here, NAT’s revenue information (and other information Sprint seeks) is unrelated to the claims and defenses within the scope of the pleadings, and thus, could not possibly be discoverable in this matter. The Commission should not expand the scope of this docket by compelling NAT to provide information on issues that are irrelevant and/or no longer at issue.

CONCLUSION

Based on the foregoing, NAT requests that the Commission provide the following relief:

1. An order denying Sprint’s motion to enforce subpoenas.
2. An order denying Sprint’s motion to reschedule depositions of NAT’s corporate representative(s).

Dated this 14th day of November, 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on *November 14th, 2011*, ***NATIVE AMERICAN TELECOM, LLC'S MEMORANDUM IN RESPONSE TO SPRINT'S "MOTION TO ENFORCE SUBPOENAS AND MODIFY PROCEDURAL SCHEDULE"*** was served via *electronic mail* upon the following:

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