

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)

SUPPORT BY CROW CREEK TRIBAL UTILITY AUTHORITY, OF THE MOTION TO STAY FILED BY NATIVE AMERICAN TELECOM, LLC IN THE MATTER OF IN RE: SPRINT COMMUNICATIONS COMPANY L.P., (“SPRINT”) V. NATIVE AMERICAN TELECOM, LLC (“NAT”)

Crow Creek Tribal Utility Authority (CCRUUA), by appearance of its undersigned counsel, Judith H. Roberts, hereby files its Support to the Motion filed on July 29, 2010 by NAT in the above captioned proceeding.

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.”
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.

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” which needs separate consideration by the SDPUC.

9. Under the “Tribal Exhaustion Doctrine,” federal courts recognize that the promotion of self-government and self-determination by an Indian Tribe requires tribal courts to have “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 8, 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 and is mandatory when a case fits within the policy. Civil disputes arising out of the activities of non-Indians on reservation lands almost always require exhaustion of tribal remedies. *Ninigret Development Corp. v. Narragansett Indian Wetuomuch Housing Authority*, 207 F.3d 21 (1st Cir. 2000).

11. Respect for Tribal Courts requires, as a matter of comity, that examination of issues of jurisdiction be conducted in the first instance by the Tribal Court itself. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 18 (1987).

12. The SDPUC has the discretion to follow the federal courts' reasoned procedure and invoke the "Tribal Exhaustion Doctrine."

13. 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 require separate and distinct consideration.

14. Further, if the SDPUC ultimately grants NAT's "Motion for Stay," Sprint's proposal to consider 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.

15. Crow Creek Tribal Utility Authority urges the SDPUC for an Order adopting NAT's proposed 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.

CONCLUSION

Crow Creek Tribal Utility Authority respectfully urges that the SDPUC follow the federal courts' reasoned procedure and invoke the Tribal Exhaustion Doctrine in this matter. It would further request that the SDPUC establish a briefing schedule as set forth above, and in greater detail within NAT's Response to Sprint's Opposition to Stay, and to recognize the very distinct and separate issues demand separate briefing by the parties and separate consideration by the SDPUC.

Dated this 6th day of August, 2010.

Attorney for Crow Creek Tribal Utility Authority

/s/ Judith H. Roberts

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CERTIFICATE OF SERVICE

I, Judith H. Roberts, certify that on August 6, 2010, the **Support by Crow Creek Tribal Utility Authority, of the Motion to Stay Filed by Native American Telecom, LLC in the Matter of in Re: Sprint Communications Company, L.P., ("Sprint") v. Native American Telecom, LLC ("NAT")** was served via electronic mail upon the following:

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