

Carter, David

From: Schenkenberg, Philip [PSchenkenberg@Briggs.com]
Sent: Monday, May 09, 2011 2:10 PM
To: Carter, David; Buntrock, Ross; Meredith Moore; jcremer@bantzlzlaw.com; 'Talbot J. Wieczorek'; 'Darla Pollman Rogers'; 'Margo D. Northrup'; 'Jeffrey D. Larson'
Cc: 'Lawson, William [GA]'; Browning, Diane C [GA]
Subject: RE: SDN v. Sprint Scheduling Order

David, I think you are overstating things. I told you guys on Wednesday I need to talk to Sprint's FCC counsel about the interplay between these two proceedings, and wasn't able to do so until Friday afternoon. I was prepared to address that on the group call, and my email was a good faith attempt to move the ball forward. In case I wasn't clear enough, I think you are right - there isn't anything else for us to talk about substantively. We have a dispute about whether the unjust enrichment discovery is discoverable. You will file a motion to compel. We will oppose it. Our concern is that the parties clearly tell the Commission what it is being asked to do to the extent we are combining federal and state discovery. That's an issue for the group to weigh in on because it's going to need to be addressed in the procedural order. Given your statement that the Commission would not be asked to address federal issues, I will suggest some language that may accomplish that.

I can talk at 10 central tomorrow if that works for the group. I will get comments out today if I can, but don't think that is necessary for us to have a productive conversation. I also think it was reasonable for us to get some depo dates on the calendar now as we negotiate testimony and hearing dates, and would hope that will be part of the conversation.

Phil

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-----Original Message-----

From: Carter, David [mailto:Carter.David@ARENTFOX.COM]
Sent: Monday, May 09, 2011 12:24 PM
To: Schenkenberg, Philip; Buntrock, Ross; Meredith Moore; jcremer@bantzlzlaw.com; 'Talbot J. Wieczorek'; 'Darla Pollman Rogers'; 'Margo D. Northrup'; 'Jeffrey D. Larson'
Cc: 'Lawson, William [GA]'; Browning, Diane C [GA]
Subject: RE: SDN v. Sprint Scheduling Order

Phil:

In light of your representation that you have a lot of available the first half of this week, we are puzzled as to why you continue to refuse our request to confer with you regarding Sprint's objections to Northern Valley's discovery requests. We have requested such a conference with you for several weeks now. And, as we stated in our previous emails, which you have apparently chosen to ignore, we do not believe that this discussion is one which necessitates the involvement of the larger group.

Nevertheless, to the extent that Spiltrock and SDN also desire discovery regarding Sprint's revenues from the traffic on their networks for which Sprint is not paying, then certainly we

are happy to discuss that issue briefly on our scheduling call. And, we say briefly, because it seems that Sprint is unwilling to engage in a conversation regarding the substance of its objections, such that the discussion will be one only about the logistics of our motion. In that regard, we again feel obliged to point out that we are not suggesting that "the SDPUC should or can decide what should be available for purposes of the FCC referral," but rather that the issues before the SDPUC are the same as those before the FCC (with the difference being interstate vs. intrastate), and that the information that we seek in this regard will be useful and relevant to both. Moreover, as you note, the parties have already agreed to the sound and reasonable principle that we should consolidate discovery, rather than unnecessarily increasing time and expense by proceeding through multiple rounds of discovery. As such, we believe that getting this issue to the PUC sooner rather than later is the appropriate course of action for all parties.

Further, when we spoke briefly with Bret on Friday, we asked that Sprint provide any proposed edits to the current draft of the procedural schedule to the group in advance of any call that we may reconvene. We believe that those written edits will allow the parties to have the most productive conversation. (And, in that regard, I understand that Darla will soon be circulating minor proposed edits in order to adjust the hearing date to not coincide with the legislative session in South Dakota.) Bret agreed to discuss this request with you and assured us that Sprint would work to promptly reschedule the call. Can we expect to receive your written comments by the end of the day? If so, I would propose having the call tomorrow morning at 11 ET/10 CT, since I will be out of the office on a variety of business matter for the remainder of the week.

Thanks,
David

David Carter
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-----Original Message-----

From: Schenkenberg, Philip [mailto:PSchenkenberg@Briggs.com]
Sent: Monday, May 09, 2011 7:59 AM
To: Buntrock, Ross; Meredith Moore; jcremer@bantzlaw.com; 'Talbot J. Wieczorek'; Carter, David; 'Darla Pollman Rogers'; 'Margo D. Northrup'; 'Jeffrey D. Larson'
Cc: 'Lawson, William [GA]'; Browning, Diane C [GA]
Subject: RE: SDN v. Sprint Scheduling Order

My apologies for the cancellation on Friday.

I've got a lot of availability the first half of the week if we want to try to reschedule. I think what we want to do is make sure we have time to complete discovery before testimony is due, so we don't end up having to come back to the Commission to move dates. In order to

further that goal, it would probably make sense to start getting some depositions on the calendar. We just got a second round of discovery responses from Splitrock, and while I haven't looked at them yet it seems to me we could get Splitrock and SDN depositions on the calendar for 2-3 days in late May or early June. We're still trying to catalog the Northern Valley information and supplemental responses, so those depositions will need to wait a bit farther. With respect to non-parties, those discussions are moving forward as well.

There are a few things to discuss with respect to the language of the procedural order. The group knows that Sprint and the 3rd party defendants had discussed combining SDPUC and FCC discovery here, but we have a disagreement about whether there are any issues before the SDPUC or the FCC that would allow Northern Valley and Sancom to obtain information regarding Sprint's revenues and other information they would use to pursue an unjust enrichment type claim. Sprint is not going to agree that the SDPUC should or can decide what should be available for purposes of the FCC referral. It is probably worth talking through how we are going to get that dispute resolved in conjunction with setting dates. I also think the current draft has a lack of clarity with respect to the time periods involved. This only involves Northern Valley, but is complicated by the fact that Northern Valley had a new FCC tariff filed in 2010, and then filed a new lawsuit against Sprint recently seeking to enforce that tariff.

As I said, I'm generally available this week.

Phil

-----Original Message-----

From: Buntrock, Ross [mailto:Buntrock.Ross@ARENTFOX.COM]
Sent: Wednesday, May 04, 2011 12:09 PM
To: Meredith Moore; jcremer@bantzlaw.com; 'Talbot J. Wieczorek'; Schenkenberg, Philip; Carter, David; 'Darla Pollman Rogers'; 'Margo D. Northrup'; 'Jeffrey D. Larson'
Subject: RE: SDN v. Sprint Scheduling Order

Let's plan on 11 AM Central/12 PM Eastern on Friday. David Carter will circulate a conference bridge number to use.

Thanks,
Ross

Ross Buntrock
Partner

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