

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT OF )  
SOUTH DAKOTA NETWORK, LLC, )  
AGAINST SPRINT COMMUNICATIONS )  
COMPANY LP )

TC 09-098

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 )

**AFFIDAVIT OF PHILIP R. SCHENKENBERG**

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF HENNEPIN )

My name is Philip Schenkenberg, I am a shareholder at Briggs and Morgan, P.A., and I am counsel for Sprint Communications Company L.P. ("Sprint") in this matter. I make this affidavit in support of Sprint's Motion to Enforce Subpoenas and Modify Procedural Schedule.

**A. SPRINT'S DISCOVERY EFFORT WITH RESPECT TO NAT**

1. In September of 2011, I contacted Scott Swier who I knew to be counsel for Native American Telecom, LLC ("NAT") and advised Mr. Swier that Sprint intended to issue subpoenas to NAT to obtain documents and take the deposition of a corporate representative. Following that call, I emailed to Mr. Swier a draft set of pleadings identifying the documents sought and the deposition topics on which deposition testimony would be requested. A true and correct copy of that email is attached as Exhibit A hereto.

2. On September 29, 2011, following a conversation I had with Mr. Swier, I emailed to Mr. Swier an executed subpoena duces tecum compelling document production and an

executed subpoena compelling testimony of a corporate representative. A true and correct copy of that email is attached as Exhibit B, a true and correct copy of the executed subpoena duces tecum is attached as Exhibit C, and a true and correct copy of the subpoena compelling testimony is attached as Exhibit D.

3. The subpoena compelling testimony was scheduled for Long Beach, California because Mr. Swier indicated that NAT's representative would likely be its President, Jeff Holoubek, who is employed by Free Conferencing and located in Long Beach. Sprint noticed this deposition to take place in Long Beach in conjunction with the deposition of Free Conferencing Corporation ("Free Conference"), which is discussed below.

4. On October 6, 2011, Mr. Swier returned an admission of service on NAT, a copy of which is attached as Exhibit E.

5. On October 14, 2011, following further discussions on this topic, Mr. Swier sent me an email indicating he would neither produce documents nor produce a witness on November 2, 2011. A copy of that email is attached as Exhibit F. NAT has not produced specific written objections, nor has NAT identified any specific burdens it seeks to avoid.

6. Prior to filing this motion, I talked with Mr. Swier and indicated Sprint would cancel the November 2 deposition, would file a motion to enforce the subpoena duces tecum, and intended to notice the corporate representative deposition following a ruling by the Commission. Mr. Swier agreed this was an appropriate way to present these discovery disputes to the Commission.

**B. SPRINT'S DISCOVERY EFFORTS WITH RESPECT TO FREE CONFERENCING**

7. On June 6, 2011, I had a conversation with Mr. Swier, who I knew to represent Free Conferencing, in which I advised Mr. Swier that Sprint intended to subpoena documents

from Free Conferencing and then conduct a deposition of a corporate representative. We agreed in that conversation that the parties would identify a reasonable document production date and then schedule a deposition following the production of documents.

8. Following this initial conversation, Claire Joseph of my office emailed a draft deposition notice and subpoena duces tecum for Free Conferencing to Mr. Swier. A true and correct copy of that email is attached as Exhibit G.

9. I had several follow-up communications with Mr. Swier in the following weeks and Mr. Swier provided objections to the way in which certain document requests were drafted. Following those communications, on July 29, 2011, I provided a revised list of documents to be produced for his review. A true and correct copy of that email is attached as Exhibit H.

10. On August 25, 2011, I emailed Mr. Swier an executed subpoena duces tecum, calling for the production of responsive documents on September 5, 2011. A copy of that email is attached as Exhibit I. Mr. Swier did not acknowledge service of the subpoena, but he did indicate that Free Conferencing intended to produce documents.

11. During the week of September 5, 2011, Mr. Swier and I exchanged emails regarding potential deposition dates for Free Conferencing's corporate representative. Mr. Swier suggested the week of November 1, 2011 and I agreed to set the deposition for November 3, 2011. A true and correct copy of that email is attached as Exhibit J. On September 13, 2011, Mr. Swier confirmed the November 3rd date and indicated the deposition would take place at Free Conferencing's offices in Long Beach, California. A true and correct copy of that email is attached as Exhibit K.

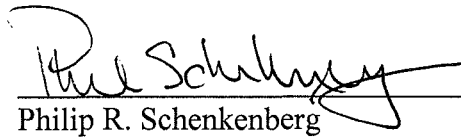
12. On September 15, 2011, I emailed and mailed to Mr. Swier amended subpoenas dated September 14, 2011. A true and correct copy of the amended subpoena duces tecum is

attached as Exhibit L. The amended subpoena for testimony of the corporate representative is attached as Exhibit M. A true and correct copy of Mr. Swier's acceptance of service is attached as Exhibit N.

13. As of the date of this affidavit, Free Conferencing has not produced any documents to Sprint, although Mr. Swier has indicated it intends to produce documents soon. Because documents have not yet been produced, I advised Mr. Swier I would cancel the November 3rd deposition, subject to Sprint's right to re-notice the deposition following its receipt of documents. A copy of that notice of cancellation is attached as Exhibit O. He agreed that disputes regarding the enforcement of the subpoenas are properly decided by the Commission.

14. Mr. Swier and I agreed it would be more appropriate to conduct the deposition following receipt of documents and to conduct the deposition of Free Conferencing on consecutive days in Long Beach, California to prevent unnecessary travel.

AFFIANT SAYS NOTHING FURTHER.

  
Philip R. Schenkenberg

Subscribed and sworn to before me  
this 27<sup>th</sup> day of October, 2011.

  
Notary Public

