

**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
AMERICAN TELECOM, LLC REGARDING
TELECOMMUNICATIONS SERVICES

TC10-026

**AFFIDAVIT IN SUPPORT OF NATIVE AMERICAN TELECOM, LLC'S
MOTION TO RE-OPEN DISCOVERY
AND STAY SPRINT'S MOTION FOR SUMMARY JUDGMENT
DUE TO NEW INFORMATION THAT HAS RECENTLY COME TO LIGHT**

1. My name is Scott R. Swier and I am an attorney licensed to practice law in South Dakota.
2. I am one of the attorneys representing Native American Telecom, LLC ("NAT") in this matter and make this Affidavit pursuant to SDCL 15-6-56.
3. On December 11, 2012, Sprint Communications Company, LP ("Sprint") filed its motion for summary judgment in this docket.
4. On January 14, 2013, NAT filed its opposition to Sprint's motion for summary judgment.
5. On April 9, 2013, the Commission held a hearing regarding Sprint's motion for summary judgment.

6. In support of its motion for summary judgment, Sprint relied upon numerous discovery responses made by NAT in SDPUC TC 11-087 - a separate docket proceeding. (See Sprint's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, ¶ 8 - filed December 11, 2012; Affidavit of Scott G. Knudson in Support of Motion for Summary Judgment - Exhibits 1 and 2 - filed February 20, 2013).

7. By incorporating NAT's discovery responses from SDPUC TC 11-087 into its motion for summary judgment in this docket, Sprint acknowledged that the two dockets (SDPUC TC 10-026 and TC 11-087) are invariably intertwined.

8. On June 18, 2013, NAT was informed that Sprint intends to withdraw the testimony of its expert witness, Randy Farrar ("Farrar"), in SDPUC TC 11-087.

9. On July 25, 2013, after NAT learned of Sprint's withdrawal of Farrar's expert testimony, NAT filed its "Motion to Re-Open Discovery and Stay Sprint's Motion for Summary Judgment Due to New Information That Has Recently Come to Light."

10. Farrar's testimony is critical to Sprint's claims in both SDPUC TC 11-087 and SDPUC TC 10-026 because (prior to its recent withdrawal) Farrar had provided the only testimony that (1) NAT is a "sham entity established for the sole purpose of 'traffic pumping'"; (2)

allowing NAT to provide its telecommunications services is “not in the public interest”; (3) the Joint Venture Agreement between the Crow Creek Sioux Tribe, Native American Telecom Enterprise, LLC, and WideVoice Communications, Inc., “is deliberately and intentionally designed for only one purpose - to promote NAT’s ‘traffic pumping’ business and to enrich NATE and WideVoice”; (4) the Service Agreement between NAT and Free Conference “is deliberately and intentionally designed for only one purpose – to promote NAT’s ‘traffic pumping’ business and to enrich Free Conference”; (5) “NAT’s ‘traffic pumping’ business harms Sprint and Sprint’s customers . . . by increasing its costs of doing business; e.g., forcing Sprint to augment its transport facilities, by increasing its legal and regulatory expenses, and by billing Sprint grossly inflated amounts of switched access traffic”; (6) “NAT provides virtually no financial benefit to CCST. NAT exists to benefit only three entities: NATE, WideVoice, and Free Conference. Due to actions taken by the FCC in the Connect America Order, the NAT business model will be made unsustainable in four or five years. At that time, NAT will be forced to exit the South Dakota market, leaving CCST with negligible benefits and potentially significant liabilities”; (7) “CCST’s 51% ownership results in little meaningful control over NAT and has resulted in no financial benefit”;

and (8) NAT has no “future financial viability.” (See SDPUC TC 11-087 - Direct Testimony of Randy G. Farrar – filed March 26, 2012).

11. Sprint’s withdrawal of Farrar’s testimony has a significant impact on Sprint’s claims in both SDPUC TC 10-026 and SDPUC TC 11-087.

12. NAT should be allowed to conduct further discovery regarding Sprint’s last-minute withdrawal of Farrar’s testimony.

13. NAT’s request to re-open discovery and stay Sprint’s motion for summary judgment is reasonable as NAT was not aware that Sprint planned to withdraw Farrar’s testimony until June 18, 2013.

14. NAT has attempted to take the deposition of Farrar in order to expedite this motion. Sprint has refused to work with NAT by refusing to make Farrar available for a deposition.

15. The harm to NAT from barring it from conducting additional discovery into these issues outweighs any potential prejudice to Sprint.

16. NAT is not seeking to reopen discovery on the eve of trial.

17. NAT’s right to a full and fair hearing on Sprint’s motion for summary judgment is at issue and NAT requests a fair opportunity to conduct such discovery as may be required to meet the factual basis for Sprint’s motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986).

18. Good cause exists to allow NAT to conduct further discovery regarding Sprint's motion for summary judgment.

19. NAT does not seek an undue delay in this docket and has attempted to conduct this additional discovery expeditiously and without duplication of earlier discovery matters.

20. NAT should be given an opportunity to engage in reasonable discovery and present all material facts to oppose Sprint's factual claims in support of Sprint's motion for summary judgment.

Dated this 23rd day of August, 2013.



Scott R. Swier

Subscribed and sworn to before me
this 23rd day of August, 2013.



Notary Public - State of South Dakota

(SEAL)

My Commission Expires: 02-15-18

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of *AFFIDAVIT IN SUPPORT OF NATIVE AMERICAN TELECOM, LLC'S MOTION TO RE-OPEN DISCOVERY AND STAY SPRINT'S MOTION FOR SUMMARY JUDGMENT DUE TO NEW INFORMATION THAT HAS RECENTLY COME TO LIGHT* was delivered *via electronic mail* on this 23rd day of August, 2013, to the following parties:

Service List (SDPUC TC 10-026)

/s/ Scott R. Swier
Scott R. Swier