

**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

**NATIVE AMERICAN TELECOM, LLC'S
REPLY IN SUPPORT OF MOTION TO DISMISS
BASED ON MOOTNESS**

INTRODUCTION

Native American Telecom, LLC (“NAT”), submits its reply in support of its motion to dismiss the Amended Complaint of Sprint Communications Company, LP (“Sprint”). The South Dakota Public Utilities Commission (“Commission”) should dismiss Sprint’s Amended Complaint because Sprint has received everything it asked for in this case. There is nothing left to litigate and the case is moot.

FACTUAL BACKGROUND

In its “Motion to Dismiss Based on Mootness,” NAT noted that Sprint’s Amended Complaint asks the Commission for the following relief:

- (1) Declaring that the Commission has sole authority to regulate Sprint’s interexchange services within the State of South Dakota;

- (2) Declaring that the Crow Creek Sioux Tribe Utility Authority lacks jurisdiction over Sprint;
- (3) Declaring that NAT must seek a Certificate of Authority from the Commission and file a lawful tariff with the Commission before it can assess charges for switched access service; and
- (4) Awarding money damages in an amount to be determined at a hearing.

(Amended Complaint, page 8).

To avoid the necessary result in this case, Sprint asserts four unsupported arguments. First, Sprint alleges that “the scope of the Commission’s jurisdiction over Sprint remains undecided.” (Sprint’s Response in Opposition to NAT’s Motion to Dismiss, pages 7-8). Second, Sprint claims “confusion” over NAT’s willingness to pay Sprint its damages claim. (Sprint’s Response, pages 5-7). Third, Sprint states that NAT’s pending certification proceeding does not provide Sprint with full relief in this case. (Sprint’s Response, page 8). All of Sprint’s arguments must fail. Following the law as established by the South Dakota Supreme Court, the Commission should grant NAT’s motion to dismiss on the grounds of mootness as there is no longer any live case or controversy before the Commission.

LAW & ANALYSIS

A. Sprint Has Received Full Relief On Its Claims

This case is moot because there is no additional relief that the Commission can provide to Sprint. Sprint has received the relief it sought (through Commission action, Circuit Court action, NAT's actions, and NAT's stipulations) in its Amended Complaint.

i.) The Commission Has Previously Decided The Jurisdictional Issues In Sprint's Favor.

Sprint's Amended Complaint first asks the Commission to (1) declare that the Commission has sole authority to regulate Sprint's interexchange services within the State of South Dakota and (2) declare that the Crow Creek Sioux Tribe Utility Authority lacks jurisdiction over Sprint. (Amended Complaint, page 8). Sprint now argues that the Commission's (and the Circuit Court's) previous jurisdictional decisions do not adequately provide Sprint with the relief it seeks. However, Sprint has received the full and complete relief that it can obtain regarding these jurisdictional issues.

In fact, on May 4, 2011, the Commission issued its "Order Denying NAT's Motion to Stay" ("Order"). This Order specifically states that "*[t]he Commission has clear jurisdiction over intrastate telecommunications.*" (Order, page 2) (citing SDCL chapters 49-13, 49-31, and 47 U.S.C. §152(b)) (emphasis added). This Order further opined that "[t]he

Commission’s jurisdiction over intrastate telecommunications services is extensive.” (Order, page 2). Additionally, the Commission found:

The regulatory scheme of telecommunications services specifically grants PUC authority and jurisdiction over intrastate facilities. See 47 U.S.C. §152(b). The authority of PUC is extensive and crucial to the overall regulatory scheme. See SDCL ch 49-31. Among other things, it has “*general supervision and control of all telecommunications companies* offering common carrier services within the state to the extent such business is not otherwise regulated by federal law or regulation.”

(Order, pages 2-3) (quoting *Cheyenne River Sioux Tribe Telephone Authority v. Public Utilities Commission of South Dakota*, 1999 SD 60, ¶21, 595 NW2d 604, 609) (emphasis added).

NAT appealed this Order and the Buffalo County Circuit Court affirmed the Commission’s decision. (Buffalo County Circuit Court – Civ. 08-11 – Memorandum Opinion – dated August 23, 2011). The Circuit Court noted that “the issue presented in this case is whether or not the PUC or the Tribal Utility Authority has jurisdiction over this matter with respect to intrastate telecommunications.” (Circuit Court Decision, page 4). The Circuit Court then found that “[t]he South Dakota Supreme Court has reviewed this jurisdictional dispute under a similar context and has *found that the tribe does not have jurisdiction.*” (Circuit Court Decision, page 7) (emphasis added).

The Commission has asserted its authority over NAT. The Commission's decision was affirmed by the Circuit Court. Therefore, Sprint has received all of the jurisdictional relief it requested and that the Commission can provide. All jurisdictional issues are moot.¹

ii.) NAT Has Applied For A Certificate Of Authority

Sprint's Amended Complaint also asks the Commission to declare that NAT must seek a Certificate of Authority and file a lawful tariff before it can assess charges for intrastate switched access service. (Amended Complaint, page 8).

After the Circuit Court's jurisdictional decision, NAT submitted to the authority of the Commission and filed an Application for Certificate of Authority ("Application"). (See SDPUC TC 11-087). This proceeding is currently pending before the Commission (and the Buffalo County Circuit Court) and a hearing will ultimately be held before the Commission. As

¹ Sprint also submits that the "mootness doctrine" may not apply to the Commission's telecommunications dockets, indicating (nonsensically) that this case can and should continue without a controversy. (Sprint's Response, page 6). Sprint provides no authority in support of this position. However, the South Dakota Supreme Court has invoked the "mootness doctrine" on several occasions in a wide variety of cases. See *State ex rel. Johnson v. Mathis Implement, Inc.*, 325 N.W.2d 58 (SD 1982); *Sioux Falls Argus Leader v. Young*, 455 N.W.2d 864 (SD 1990). At no time has our Supreme Court ever held that administrative agencies are exempt from following the "mootness doctrine."

such, Sprint has received the relief it requested and this Certificate of Authority issue is now moot.

iii.) NAT Has Agreed To Pay Sprint Its \$281.95 In Money Damages

Lastly, Sprint's Amended Complaint asks the Commission to award money damages. (Amended Complaint, page 8).

Sprint concedes that its money damages in this case are \$281.95. Sprint now somehow claims "confusion" over NAT's offer to settle Sprint's damages claim. If there is some further clarity that Sprint desires from the Commission, it would not change the fact that Sprint seeks to have the Commission determine that Sprint does not have to pay for intrastate interexchange services from NAT, so long as NAT is operating without the Commission's Certificate of Authority. Therefore, NAT will attempt to once again clarify this issue.

NAT has formally withdrawn its demand for payment for intrastate access service provided to Sprint by NAT.² NAT will pay Sprint for the intrastate access charges that Sprint already paid to NAT (\$281.95), and NAT has agreed not to bill Sprint for intrastate access service until the Commission decides NAT's pending Application. NAT has agreed not to bill Sprint for the intrastate access charges incurred during the entire time that NAT awaits its Certificate of Authority from the Commission.

² In fact, all of the IXCs have received the same offer from NAT.

NAT has also agreed not to bill Sprint in arrears for any intrastate charges incurred leading up to the time that NAT is granted its Certificate of Authority.

NAT does not desire to expend tens of thousands of dollars in additional attorney's fees in this case when Sprint is seeking a refund claim of less than \$300.00. Sprint has received the relief it requested and this damages issue is now moot.

CONCLUSION

Sprint has achieved the goals it sought in this case. There is nothing else to litigate. The issues are moot. The case is over. The Commission should enter an order of dismissal based on the mootness of Sprint's claims.

Dated this 11th day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of *NATIVE AMERICAN TELECOM, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS BASED ON MOOTNESS* was delivered *via electronic mail* on this 11th day of July 2012, to the following parties:

Service List (SDPUC TC 10-026)

/s/ Scott R. Swier

Scott R. Swier