BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE:

SPRINT COMMUNICATIONS COMPANY L.P.,

Complainant,

v.

NATIVE AMERICAN TELECOM, LLC,

Respondent.

Docket No. TC10-026

SPRINT COMMUNICATIONS COMPANY L.P.'S MEMORANDUM IN OPPOSITION TO NATIVE AMERICAN TELECOM, LLC'S MOTION FOR A PROTECTIVE ORDER

INTRODUCTION

Sprint Communications Company L.P. ("Sprint") submits this memorandum in opposition to Native American Telecom, LLC's ("NAT") Motion for a Protective Order. Not only are NAT's underlying motions to stay and dismiss premised upon a tribal court action that the United States District Court has stayed, but NAT utterly fails to establish that it is entitled to a protective order. Sprint is entitled to timely and complete answers to its discovery so that it may pursue its claim against NAT. There is no cause for delay.

FACTS

On May 5, 2010, Sprint filed its Amended Complaint, instituting this action against NAT. Since that time, actions have been begun in both Crow Creek Sioux Tribal Court, instituted by NAT, and federal court, instituted by Sprint. With the federal district court's Order enjoining NAT's tribal court action, however, the action in tribal court has effectively ended.

With the end of the tribal court action, NAT's motion to dismiss, filed June 6, 2010, and NAT's motion for a stay, filed July 29, 2010, have been rendered moot. As such, NAT can no longer use the tribal court action as a delay tactic. In order to advance its claims before the Commission, on January 31, 2010, Sprint served NAT with interrogatories and document requests. Four days before NAT was to serve its answers to the discovery, NAT refused to meet its deadline. Knudson Aff. Ex. 1. In an effort to resolve NAT's dispute, Sprint offered NAT one extra week in which to reply to Sprint's discovery. Knudson Aff. Ex. 2. NAT's response to this offer was to file its motion for a protective order.

ARGUMENT

NAT's motion must be denied. NAT fails to demonstrate it is entitled to a protective order. Furthermore, the basis for NAT's underlying motions is moot.

A. Standards for a Protective Order

S.D.C.L. § 15-6-26(b)(1)[1] establishes the general scope and limits of discovery. The rule states:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

It is settled law that "[a]ll relevant matters are discoverable unless privileged." *Kaarup v. St. Paul Fire & Marine Ins.*, 436 N.W.2d 17, 20 (S.D. 1989). As the information sought

[1] This Rule is applicable to Commission proceedings by way of S.D. Admin. R. 20:10:01:01.02.

by Sprint is clearly relevant, NAT's motion is merely one of timing – an item not recognized by the South Dakota Rules.

S.D.C.L. § 15-6-26(c) requires that a party seeking a protective order must establish good cause:

> for good cause shown, the court in which the action is pending, on matters relating to a deposition, interrogatories, or other discovery, or alternatively, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

NAT's motion fails to meet this standard.

The South Dakota courts look to their federal counterparts when considering the discovery disputes. *See Williams v. Carr*, 84 S.D. 102, 104, 167 N.W.2d 774, 775 (1969) (noting the similarities between South Dakota and Federal Rules of Civil Procedure). As such, South Dakota state and federal courts require that a court may grant a protective order only upon a showing of good cause by the moving party. *General Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973). The movant must articulate "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *Id.* (additional citation and quotation marks omitted). In this case, NAT has not, and cannot, demonstrate good cause as to why it should be relieved of its obligation to answer Sprint's discovery.

B. <u>The enjoined tribal court action is not good cause for delay</u>

NAT's motion is premised on a tribal court action that has been enjoined by the South Dakota federal district court. *See* NAT's Motion for a Protective Order ¶ 3 ("NAT's 'Motion to Stay' requests that this matter be stayed until the lawsuit now being

prosecuted by Native American Telecom against Sprint Communications Company, L.P. ("Sprint") in Crow Creek Sioux Tribe – Tribal Court is concluded."). As there is no lawsuit "now being prosecuted" in tribal court, NAT is not entitled to a protective order.

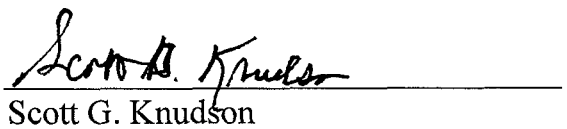
As the tribal court action is no longer a factor, NAT's underlying motion to dismiss and motion for a delay are rendered moot, as are NAT's contentions that answering Sprint's discovery is an undue expense. When considering NAT's motions, the Commission Staff determined that NAT's motion to dismiss should be denied. The Commission Staff found merit in NAT's motion to dismiss only until the question of jurisdiction had been resolved. *See* Staff Brief at 3. That question has been answered. Therefore, NAT's motion to dismiss and motion for a stay have been rendered moot. These pending motions are not enough to establish "good cause" such that Sprint's efforts to pursue its action against NAT should be delayed.

CONCLUSION

NAT's motion for a protective order should be denied. NAT has failed to establish good cause such that it should be relieved of its obligation to answer Sprint's discovery. Any outstanding issues regarding the tribal court action have been resolved by the South Dakota federal district court. As such, it is time to move forward before the Commission.

Dated: March 15, 2011.

BRIGGS AND MORGAN, P.A.



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