

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN RE:

Docket No. TC10-026

SPRINT COMMUNICATIONS  
COMPANY L.P.,

Complainant,

v.

NATIVE AMERICAN TELECOM,  
LLC,

Respondent.

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**SPRINT'S NOTICE OF  
SUPPLEMENTAL  
AUTHORITY**

Sprint Communications Company ("Sprint") respectfully submits this Notice of Supplemental Authority in support of its motion for summary judgment.

**A. The All American Decision**

On March 25, 2013, the Federal Communications Commission ("FCC") issued an order in a traffic pumping case involving two entities (All American and e-Pinnacle) that claimed to be operating as competitive local exchange carriers ("CLECs"). *In the Matter of AT&T Corp v. All Am. Tel. Co.*, File No. EB-09-MN-010, FCC 13-38, Memorandum Opinion & Order (Mar. 25, 2013) ("*2013 All American Order*") (attached as Exhibit A hereto). The FCC found that All American and e-Pinnacle were "sham" entities, engaged in unjust and unreasonable conduct, and assessed

access charges in violation of their tariffs. *2013 All American Order*, ¶¶ 24, 34.

The *2013 All American Order* is of particular importance here because the FCC relied heavily on the Utah PSC's decision that All American had not complied with state legal requirements applicable to competitive providers. The Utah PSC initially awarded All American a certificate of public convenience and necessity, but revoked that CPCN when it became clear that (1) certain facts initially represented were not true, and (2) All American had operated in violation of state law. *2013 All American Order*, ¶ 19. The FCC summarized the Utah PSC's findings:

Characterizing All American as a “mere shell company,” the Utah PSC found that All American lacked the technical, financial, and managerial resources to serve the customers it represented it would and could serve when applying for its CPCN. All American, the Utah PSC determined, misrepresented its intent to provide all forms of resold local exchange service, when, in fact, it never planned to serve any customers other than Joy. The Utah PSC concluded that All American's maintenance of a CPCN was not in the public interest. Refusing to condone All American's “blatant legal violations,” the Utah PSC explained that All American operated illegally in Utah “for about three years prior to even obtaining its CPCN,” that “[i]t operated illegally in Beehive territory while it was applying for a CPCN,” and that “[f]rom the date it was granted its CPCN explicitly prohibiting it from entering Beehive territory, it was already operating there illegally” and continued to do so. In other words, All American never intended to—nor did it ever—comply with its Utah authorization.

*2013 All American Order*, ¶ 19 (footnotes omitted). The Utah PSC concluded that All American’s certificate “should be rescinded because it ‘does not merit’ the ‘concomitant privileges’ obtained from a CPCN, including ‘the right to levy access charges’ and ‘order number blocks.’” *Id.* ¶ 21. The Utah PSC, moreover, ordered All American to cease operating in Utah within 30 days. *Id.*

In its order, the FCC relied heavily on the Utah PSC’s decisions on these state law matters. *See id.* ¶ 25 (the Utah PSC’s decision that All American knew it was operating illegally supported the finding that All American engaged in unjust and unreasonable conduct in violation of 47 U.S.C. § 201(b)); *id.* ¶ 36 (traffic to All American and e-Pinnacle were “provided in geographic areas of Utah where they were not authorized by the Utah PSC to provide services,” which supported a finding that their bills violated 47 U.S.C. §§ 201(b), 203). And, the FCC rejected cries that the Utah PSC’s findings were irrelevant:

We disagree with Defendants’ contention that the Utah PSC’s findings are irrelevant to our analysis. The Utah PSC conducted extensive proceedings into All American’s operations, and its findings are credible and independently supported by the record.

*2013 All American Order*, ¶ 39 (footnotes omitted).

Sprint’s motion for summary judgment asks the Commission to exercise the same authority that the Utah PSC exercised over All

American and e-Pinnacle. NAT has been operating illegally for years, thumbing its nose at the Commission, the Commission's rules, and South Dakota statutes. Sprint seeks a simple order on undisputed facts, i.e., that NAT is providing service without a certificate in violation of state law and must stop. The *2013 All American Decision* should give the Commission confidence that its exercise of authority is not only appropriate, but also an important part of the joint federal/state regulation of telecommunications services.

**B. The Sancom Decision**

Sprint is also providing the Commission with attached a copy of *Qwest Communications Co. v. Sancom, Inc.*, File No. ED-10-MD-004, DA 13-321, Memorandum Opinion & Order (Mar. 5, 2013) (attached as Exhibit B hereto). There, the FCC found Qwest did not owe access charges to Sancom because (in part) Free Conferencing Corporation was not Sancom's "end user," was not billed for service, and behaved in a manner inconsistent with a tariffed carrier/customer relationship. *Id.* ¶ 17. While the order is not directly applicable to the legal issues on Sprint's pending motion for summary judgment, it does further demonstrate an important point: Free Conference Corporation's business plan has, for years, been to enter into sham arrangements with South

Dakota companies to bilk IXCs and line its own pockets. Again, the Commission should put an end to this practice.

Respectfully submitted,

Dated: April 3, 2013.

**BRIGGS AND MORGAN, P.A.**

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