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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF A COMPLAINT FILED TC10-026
BY SPRINT COMMUNICATIONS COMPANY, LP
AGAINST NATIVE AMERICAN TELECOM, LLC
REGARDING TELECOMMUNICATIONS SERVICES

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Transcript of Proceedings
July 30, 2013

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Kristen Edwards
Greg Rislov
Brian Rounds
Patrick Steffensen
Darren Kearney
Deb Gregg
Sherry Dickerson

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,
4 on the 30th day of July, 2013, commencing at 9:30 a.m.

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1 COMMISSIONER HANSON: In the matter of the
2 Complaint filed by Sprint Communications Company against
3 Native American Telecom regarding telecommunications
4 services. This is TC10-026.

5 The question is how shall the Commission
6 proceed? There are three pending motions in this docket,
7 and there was a -- recently filed last Thursday there was
8 an additional motion that was filed.

9 We have before us NAT's Motion to Dismiss, NAT's
10 Motion to Dismiss for Mootness, Sprint's Motion for
11 Summary Judgment, and the recently filed motion by NAT to
12 reopen discovery and stay Sprint's Motion for Summary
13 Judgment. And since that was the most recently filed I
14 will ask the parties --

15 I believe we have several people that did not
16 indicate they were on the phone with us at the time we
17 were calling roll in the beginning. So I will check to
18 make certain that all of the parties are still with us
19 from NAT.

20 Mr. Swier, are you with us.

21 MR. SWIER: I am, Mr. Chair.

22 COMMISSIONER HANSON: Mr. Shultz, are you now on
23 the line?

24 MR. SHULTZ: Yes, Mr. Chairman. Thank you.

25 COMMISSIONER HANSON: Thank you. And, Sprint.

1 Sprint is here. Present. Thank you. And I will ask
2 if it the parties are ready to go forward with NAT's
3 motion today, NAT's Thursday motion to reopen
4 discovery.

5 MR. SHULTZ: Yes, Mr. Chair.

6 COMMISSIONER HANSON: Is Sprint ready?

7 MR. TOBIN: Mr. Chair, Sprint would object to
8 hearing the motion --

9 COMMISSIONER HANSON: Is your mic on? And
10 you'll probably have to eat the mic, it sounds like.

11 MR. KNUTSON: To restate that, Mr. Chair,
12 Scott Knutson for Sprint Communications. Sprint would
13 object to hearing that motion today. It is an effort to
14 further delay deliberations of three motions that are
15 ripe for the Commission's decision, deliberation and
16 decision. It attempts to introduce issues of discovery
17 from Docket 11-087 into Docket 10-026. It amounts to a
18 procedurally improper effort to delay determination of
19 Sprint's Motion for Summary Judgment.

20 The rules are very clear that in order for NAT
21 to attempt to oppose Sprint's Motion for Summary Judgment
22 on the grounds that additional discovery's needed,
23 SDCL 15-6-56F requires that NAT file by way of Affidavit
24 a statement attesting to what additional facts are
25 needed, how that discovery would relate to the issues

1 being raised in opposing summary judgment.

2 This motion to reopen discovery is not that
3 Affidavit. It is not proper under Rule 56F. And so,
4 again, we'd object to hearing that motion today. We
5 believe the other motions pending are ripe for
6 deliberation and determination and the Commission should
7 determine how we should proceed on those motions.

8 COMMISSIONER HANSON: Thank you, Mr. Knutson.
9 Mr. Swier, were you able to hear what Mr. Knutson had to
10 say?

11 MR. SWIER: Yeah, I could barely hear him,
12 Mr. Chair, but I could hear it.

13 COMMISSIONER HANSON: Okay. Thank you. Then I
14 would like to hear from you, and then I would like to
15 hear from Commission counsel.

16 MR. SWIER: Mr. Chair, as you know, on April 9
17 of 2013, the Commission held a hearing regarding Sprint's
18 Motion for Summary Judgment. In support of that Motion
19 for Summary Judgment in this particular case TC-10-026
20 Sprint relied on numerous discovery responses that were
21 made by NAT in TC-11-087. That's a completely separate
22 document -- or excuse me. Docket proceeding.

23 As the Commission will remember, TC-11-087 is
24 the pending CLEC application that NAT has in front of
25 the Commission at this time. So what Sprint did is they

1 took discovery from that separate docket proceeding,
2 11-087, and they used that discovery information in
3 support of their Motion for Summary Judgment in this
4 case.

5 By incorporating that discovery from 11-087 into
6 this case Sprint acknowledged that these two dockets,
7 10-026 and 11-087, are invariably intertwined because it
8 goes to the CLEC application.

9 On June 18, a couple months after the Commission
10 had its summary judgment hearing, NAT was now informed by
11 Sprint that it intended to withdraw the entire testimony
12 of its expert witness, Mr. Farrar. That was the expert
13 testimony that was filed in 11-087. And, again, Sprint
14 has already conceded that these two dockets are
15 intertwined.

16 We were notified for the first time that their
17 entire expert testimony from Mr. Farrar they were now
18 going to withdraw. In other words, we were just informed
19 that they're no longer going to stand behind that expert
20 testimony given by Mr. Farrar.

21 We believe that Mr. Farrar's testimony in these
22 dockets is crucial. As you will recall in 11-087 the
23 Commission relied heavily on Mr. Farrar's testimony in
24 denying NAT's Motion for Summary Judgment. So to
25 somehow say now that they're withdrawing Farrar's

1 testimony and that somehow his testimony is not relevant
2 to both of these dockets I think at this point is
3 disingenuous.

4 So here's what we've asked. We've asked that
5 because of this last minute withdrawal of Farrar's
6 testimony that we be given an opportunity to depose
7 Mr. Farrar. Because his testimony is applicable in both
8 of these dockets.

9 One of the arguments Sprint has made is that we
10 are trying to simply delay this particular docket.
11 That's absolutely not true. Because we actually provided
12 notice to Sprint that we wanted to take Mr. Farrar's
13 deposition yesterday. They were provided notice of that.
14 We're not trying to take his deposition in November or
15 December. We actually noticed his deposition for
16 yesterday.

17 They refused to provide Mr. Farrar. So to say
18 that we're trying to delay this is absolutely not
19 correct. We tried to take his deposition yesterday.
20 Sprint put up a roadblock saying that, well, we're
21 withdrawing his testimony now.

22 The South Dakota Rules of Civil Procedure don't
23 allow Sprint to file testimony from their expert under
24 oath and then decide to pull it back after maybe
25 they're not happy with how the testimony looks at this

1 juncture.

2 So all we're asking to do is to reopen the
3 discovery so we can take the deposition of Farrar because
4 we think that that is going to be important testimony in
5 both 10-26 and 11-87. And that's all we're asking in
6 this case is to give us an opportunity to conduct a
7 deposition of their expert who they've now withdrawn.
8 That's all we're asking to do.

9 We're not asking for a delay. Right now it's
10 whenever Sprint will decide to produce their expert
11 witness, which we're entitled, of course, to depose. So,
12 again, we could have had this done yesterday. We could
13 have had his deposition taken. Sprint refused. So all
14 we're asking for is to be able to reopen discovery in
15 this case.

16 Thank you.

17 COMMISSIONER HANSON: Ms. Wiest.

18 MS. AILTS WIEST: I just -- I have a question
19 first for Sprint. You started by saying that you object
20 to hearing the motion today.

21 Is Sprint going to be responding to the motion
22 in writing?

23 MR. KNUTSON: We would if it continues on the
24 Commission docket. We would respond to it orally.

25 MS. AILTS WIEST: So you do plan to provide a

1 written response to the motion?

2 MR. KNUTSON: Yes. However, I don't believe the
3 Commission can go forward with deliberations on the
4 pending motions because I think you will see that what
5 has been attempted here is simply to interject issues
6 they claim are in 11-87 and some of them lap over into
7 10-26.

8 And I refer you to the Order of the Commission
9 on the discovery disputes, 11-87, particularly the May 4,
10 2012, Order where the Commission was very clear to
11 distinguish between discovery that Sprint and CenturyLink
12 could have of NAT versus the discovery NAT could have of
13 Sprint and CenturyLink.

14 The reason they drew the distinction was the
15 docket in 11-87, "regards NAT's ability to meet the
16 requirements to receive the Certificate of Authority, not
17 the intervenor's current ability to meet the
18 requirements."

19 So the application for Certificate of Authority
20 in 11-87 raises distinct issues from 10-26. The fact
21 that Sprint used admissions by a party opponent from
22 11-87 as part of its summary judgment briefing in 10-26
23 does not give NAT the right to delay deliberations of the
24 motions pending in 10-26.

25 What NAT is required to do is to demonstrate

1 that there are material facts in dispute where that
2 they need discovery and they can show what discovery
3 they would have under Rule 56F and they haven't done
4 that.

5 MS. AILTS WIEST: The purpose of putting the
6 question, I believe, on the Commission agenda, how shall
7 the Commission proceed, you know, was to determine those
8 three, at the time that we put the agenda out the three
9 pending motions, NAT's Motion to Dismiss, Motion For
10 Mootness, and Sprint's Motion for Summary Judgment.

11 Of course, since that time NAT has put forth a
12 motion requesting the staying of Sprint's Motion for
13 Summary Judgment. And it's my understanding now that
14 Sprint is -- doesn't -- you don't want to have that heard
15 before the Commission today and that you would respond to
16 that in writing.

17 My problem is is that that motion is certainly
18 applicable to how the Commission shall proceed, and I'm
19 not sure how we decide how to proceed prior to deciding
20 that motion.

21 COMMISSIONER HANSON: Ms. Wiest, I'm curious
22 that if the Commission should decide that on the face of
23 the motion regardless of what argument may come up in
24 opposition from -- well, in opposition, that the
25 Commission would decide that -- in Sprint's favor and

1 that it's not necessary to reopen discovery, that the
2 withdrawal of Farrar's testimony in TC-11-087 does not
3 affect TC 10-026.

4 Can we, so to speak, bench that at this
5 juncture? Do we even need to proceed to a -- to hearing
6 what Sprint's position is?

7 MS. AILTS WIEST: I think that the fact is that
8 the motion itself was not put on the agenda for notice,
9 Sprint has not formally responded to the motion and I
10 would think that the Commission would want to hear that
11 and make its decision and then, depending on what its
12 decision is, I think we can schedule those three motions
13 for Commission decision.

14 COMMISSIONER HANSON: I appreciate that. It was
15 not noticed -- because it came in Thursday, it was not
16 noticed on this meeting so we cannot make a determination
17 at this meeting on that issue. All right. I see what
18 you had to say.

19 My concern is that this is a 2010 docket and it
20 seems like we have explored every nook and cranny and
21 then we have redundantly examined those nooks and
22 crannies repeatedly. And I fear that -- well, we need to
23 resolve this. And we need to resolve it expeditiously,
24 and I see -- I'm troubled by this motion coming in at the
25 last minute like this. Especially when the parties are

1 struggling with even agreeing on a time for motions to be
2 placed on the agenda.

3 I think that it's up to the Commission to just
4 say we're placing these on the agenda, we're going to
5 decide and finalize this. And so frustration, I'm
6 venting here.

7 Commissioner Nelson, I see you're asking for the
8 mic.

9 COMMISSIONER NELSON: Thank you. I would have
10 preferred to deal with NAT's motion today, but
11 understanding that we didn't notice it and that Sprint is
12 asking for time to respond formally, that's not going to
13 happen.

14 And so what I would propose, and I'm going to
15 look at Rolayne to make sure we're not out in left field,
16 but what I would propose is to deal with all four of
17 these motions two weeks from today, obviously dealing
18 with NAT's newest motion first and understanding that if
19 we grant that motion, then the other three are going to
20 be further delayed. But I would propose to put all four
21 of them on the agenda two weeks from today. And as
22 Commissioner Hanson said, move this ball along.

23 MS. AILTS WIEST: So I would just ask the
24 parties if there's any objection to doing that.

25 COMMISSIONER HANSON: That's exactly what -- I

1 appreciate Commissioner Nelson's position and, frankly,
2 unless there's an absolutely earth moving reason not to
3 do that, that is what I would propose to do.

4 So, Mr. Knutson, any reason why this
5 Commission should not hear those four issues two weeks
6 from today?

7 MR. KNUTSON: We can make ourselves available
8 for that hearing.

9 COMMISSIONER HANSON: Mr. Swier.

10 MR. SWIER: Your Honor, I have a full-day trial
11 in front of Judge Trandahl in Winner on that day. That
12 hearing starts at 9 a.m. in Winner and is expected to go
13 all day so I would not be available that day.

14 MR. KNUTSON: What about Mr. Shultz?

15 MR. SHULTZ: I am two weeks from today -- I've
16 just got to confirm one thing, but I think I am
17 available.

18 COMMISSIONER HANSON: Mr. Shultz, are you
19 comfortable proceeding without Mr. Swier?

20 MR. SHULTZ: You know, I prefer -- Scott has
21 been involved, of course, much longer in both these
22 matters than I have, but I think I'd prefer to have Scott
23 there, available as well.

24 MS. AILTS WIEST: Just one thing -- I'm sorry.

25 COMMISSIONER HANSON: No. Go right ahead.

1 MS. AILTS WIEST: I would just throw out that to
2 the extent if the 13th, you know, doesn't work for the
3 parties another thing would be maybe to stop trying to
4 have these on, you know, Commission agenda meetings and
5 just see if we can schedule them for a different day if
6 that would work for people.

7 COMMISSIONER HANSON: I appreciate that. Let's
8 direct Staff to proceed to setting a date as soon as
9 possible for all parties.

10 COMMISSIONER NELSON: Let me, if I might,
11 Mr. Chairman, put some context to as soon as possible.

12 COMMISSIONER HANSON: Not tomorrow morning.

13 COMMISSIONER NELSON: I'd make tomorrow morning
14 work. But within -- by the end of August we'd need to
15 have moved along with this.

16 COMMISSIONER HANSON: As soon as possible. And
17 is there any question on that?

18 We appreciate from all of the parties the amount
19 of work that all of you have done and hopefully we will
20 get this concluded then. That's the direction from the
21 Commission.

22 MR. KNUTSON: Thank you, Mr. Chairman. We
23 appreciate the Commission's flexibility in trying to get
24 this resolved.

25 MR. SWIER: Thank you.

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MR. SHULTZ: Thank you very much.

COMMISSIONER HANSON: You bet.

(The proceeding is concluded.)

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 30th day of
11 July, 2013, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 22nd day
14 of August, 2013.

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18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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<p style="text-align: center;">1</p> <p>10-026 [3] - 4:17, 6:7, 11:3 10-26 [5] - 8:5, 9:7, 9:20, 9:22, 9:24 11-087 [6] - 4:17, 6:2, 6:5, 6:7, 6:13, 6:22 11-87 [6] - 8:5, 9:6, 9:9, 9:15, 9:20, 9:22 13th [1] - 14:2 15-6-56F [1] - 4:23 18 [1] - 6:9</p>	<p>affect [1] - 11:3 Affidavit [2] - 4:23, 5:3 AGAINST [1] - 1:5 agenda [7] - 10:6, 10:8, 11:8, 12:2, 12:4, 12:21, 14:4 agreeing [1] - 12:1 ahead [1] - 13:25 Ailts [1] - 1:13 AILTS [7] - 8:18, 8:25, 10:5, 11:7, 12:23, 13:24, 14:1 allow [1] - 7:23 American [1] - 3:3 AMERICAN [1] - 1:5 amount [1] - 14:18 amounts [1] - 4:17 applicable [2] - 7:7, 10:18 application [3] - 5:24, 6:8, 9:19 appointed [1] - 16:8 appreciate [5] - 11:14, 13:1, 14:7, 14:18, 14:23 April [1] - 5:16 argument [1] - 10:23 arguments [1] - 7:9 attached [1] - 16:11 attempt [1] - 4:21 attempted [1] - 9:5 attempts [1] - 4:16 attesting [1] - 4:24 August [2] - 14:14, 16:14 Authority [2] - 9:16, 9:19 available [4] - 13:7, 13:13, 13:17, 13:23 Avenue [1] - 2:3</p>	<p style="text-align: center;">C</p> <p>cannot [1] - 11:16 Capitol [2] - 2:2, 2:3 case [5] - 5:19, 6:4, 6:6, 8:6, 8:15 CenturyLink [2] - 9:11, 9:13 certain [1] - 3:18 certainly [1] - 10:17 CERTIFICATE [1] - 16:2 Certificate [2] - 9:16, 9:19 Certified [2] - 16:6, 16:19 CERTIFY [1] - 16:8 chair [5] - 3:21, 4:5, 4:7, 5:12, 5:16 Chair [1] - 4:11 CHAIRMAN [2] - 1:10, 1:11 Chairman [3] - 3:24, 14:11, 14:22 check [1] - 3:17 Cheri [2] - 1:23, 16:18 CHERI [1] - 16:5 CHRIS [1] - 1:11 Civil [1] - 7:22 claim [1] - 9:6 clear [2] - 4:20, 9:10 CLEC [2] - 5:24, 6:8 comfortable [1] - 13:19 coming [1] - 11:24 commencing [1] - 2:4 COMMISSION [3] - 1:1, 1:10, 1:12 Commission [24] - 3:5, 5:6, 5:15, 5:17, 5:23, 5:25, 6:9, 6:23, 8:24, 9:3, 9:8, 9:10, 10:6, 10:7, 10:15, 10:18, 10:22, 10:25, 11:10, 11:13, 12:3, 13:5, 14:4, 14:21 Commission's [2] - 4:15, 14:23 Commissioner [3] - 12:7, 12:22, 13:1 COMMISSIONER [22] - 1:11, 3:1, 3:22, 3:25, 4:6, 4:9, 5:8, 5:13, 8:17, 10:21, 11:14, 12:9, 12:25, 13:9, 13:18, 13:25, 14:7, 14:10, 14:12, 14:13, 14:16, 15:2 Communications [2] -</p>	<p>3:2, 4:12 COMMUNICATIONS [1] - 1:4 Company [1] - 3:2 COMPANY [1] - 1:4 Complaint [1] - 3:2 COMPLAINT [1] - 1:4 completely [1] - 5:21 conceded [1] - 6:14 concern [1] - 11:19 concluded [2] - 14:20, 15:3 conduct [1] - 8:6 confirm [1] - 13:16 context [1] - 14:11 continues [1] - 8:23 correct [2] - 7:19, 16:11 counsel [1] - 5:15 COUNTY [1] - 16:3 couple [1] - 6:9 course [3] - 8:11, 10:11, 13:21 crannies [1] - 11:22 cranny [1] - 11:20 Cremer [1] - 1:14 CRR [1] - 1:23 crucial [1] - 6:22 curious [1] - 10:21 current [1] - 9:17</p>	<p>denying [1] - 6:24 depose [2] - 7:6, 8:11 deposition [7] - 7:13, 7:14, 7:15, 7:19, 8:3, 8:7, 8:13 determination [3] - 4:18, 5:6, 11:16 determine [2] - 5:7, 10:7 Dickerson [1] - 1:17 different [1] - 14:5 direct [1] - 14:8 direction [1] - 14:20 discovery [17] - 3:12, 4:4, 4:16, 4:25, 5:2, 5:20, 6:1, 6:2, 6:5, 8:3, 8:14, 9:9, 9:11, 9:12, 10:2, 11:1 discovery's [1] - 4:22 disingenuous [1] - 7:3 Dismiss [3] - 3:9, 3:10, 10:9 dispute [1] - 10:1 disputes [1] - 9:9 distinct [1] - 9:20 distinction [1] - 9:14 distinguish [1] - 9:11 DO [1] - 16:8 Docket [2] - 4:17 docket [7] - 3:6, 5:22, 6:1, 7:10, 8:24, 9:15, 11:19 dockets [5] - 6:6, 6:14, 6:22, 7:2, 7:8 document [1] - 5:22 done [3] - 8:12, 10:3, 14:19 drew [1] - 9:14 duly [1] - 16:8 duly-appointed [1] - 16:8</p>
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