

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE:

Docket No. TC10-026

SPRINT COMMUNICATIONS
COMPANY L.P.,

Complainant,

v.

NATIVE AMERICAN TELECOM, LLC,

Respondent.

**SPRINT COMMUNICATIONS
COMPANY L.P.'S MOTION FOR
LEAVE TO FILE A SUPPLEMENTAL
REPLY TO NAT'S REPLY BRIEF, OR
TO STRIKE**

INTRODUCTION

Sprint Communications Company L.P. ("Sprint") submits this motion for leave to file a supplemental reply with the Commission to respond to the allegations raised by Native American Telecom, LLC's ("NAT") Reply to Staff Brief, filed with the Commission at 9:00 p.m. on December 6, 2010, effectively filed on December 7, 2010. NAT's untimely submission is not true to its caption. While styled as a Reply to Staff Brief, NAT's brief is actually an improper response to Sprint's timely submission. In the interests of fairness, Sprint seeks the opportunity to set the record straight. In the alternative, Sprint seeks to have NAT's untimely Reply Brief stricken.

ARGUMENT

Pursuant to the Commission's October 18 Order Setting Amended Briefing Schedule and further agreement by the Commission, the parties in this case were to file their Replies to *Staff* Brief on or before December 6, 2010. Following the Commission's directive, Sprint filed its Reply to Staff Brief on December 6, 2010, as did the Intervening



Parties. NAT, however, failed to comply with the Commission's directive – both in time and content.

First, NAT's brief is untimely. NAT did not file its brief until 9:00 p.m. on December 6, long after the close of business. The untimely nature of NAT's brief is demonstrated in the Commission's own docket. (See <http://puc.sd.gov/Dockets/Telecom/2010/tc10-026.aspx>, listing NAT's brief as filed on December 7, 2010.) S.D. Admin. R. 20:10:01:02.02 sets forth the standards for appropriately filing documents with the Commission. The rule explicitly notes that late filed documents are considered filed on the following day:

Documents and facsimiles will only be received by the commission during regular business hours from 8:00 a.m. to 5:00 p.m., Central Time. If received at a later time or during a weekend or holiday, the document or facsimile is considered filed with the commission on the next working day. A person whose filing is made untimely as a result of an electronic or mail delivery failure may seek appropriate relief from the commission.

SD. Admin. R. 20:10:01:02.02. The appropriate relief in this case is to either allow Sprint to file a supplemental reply to NAT's submission or strike completely NAT's submission pursuant to SDCL § 15-6-12(f).¹

Second, NAT's brief is not a reply to Staff's Brief. Relying on electronic filing procedures, NAT used the time after receiving Sprint's brief to draft a brief that does not, in fact, reply to the Staff's brief, but instead directly attacks the arguments advanced by Sprint. For example, NAT directly addresses Sprint's arguments with respect to the federal court injunction. *See, e.g.*, NAT Brief at 1-4. NAT also attacks Sprint's

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

arguments on the applicability of exhaustion to the Commission. NAT Brief at 4. In addition, NAT directly responds to Sprint's explanation of SDCL § 49-13-1.1. In the interests of fairness, Sprint seeks the opportunity to respond to NAT's contentions, the same opportunity NAT took.

CONCLUSION

NAT's submission violated the Commission's directive, both with respect to content and timeliness. In light of NAT's violations, Sprint seeks the opportunity file a supplemental reply to NAT's submission so that Sprint may respond to the allegations raised by NAT. In the alternative, Sprint seeks to have NAT's untimely brief stricken.

Dated: December 13, 2010

BRIGGS AND MORGAN, P.A.



Scott G. Knudson
Philip R. Schenkenberg
2200 IDS Center
Minneapolis, Minnesota 55402
(612) 977-8400

WHITING LAW OFFICE

Stanley E. Whiting
142 E. 3rd Street
Winner, South Dakota
(605) 842-3373

TOBIN LAW OFFICES

Tom D. Tobin
PO Box 730
422 Main Street
Winner, S.D. 57580
(605) 842-2500

Counsel for Sprint Communications
Company, LP