

**RECEIVED**

**MAY 19 2011**

STATE OF SOUTH DAKOTA	)	<b>SOUTH DAKOTA PUBLIC UTILITIES COMMISSION</b>	CIRCUIT COURT
	:		
COUNTY OF BUFFALO	)		FIRST JUDICIAL CIRCUIT

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

CIV. 11-

**NATIVE AMERICAN TELECOM, LLC's  
APPLICATION FOR STAY OF ADMINISTRATIVE PROCEEDINGS  
PENDING JUDICIAL REVIEW  
&  
NOTICE OF HEARING**

PLEASE TAKE NOTICE that Appellant Native American Telecom, LLC ("NAT"), pursuant to SDCL §1-26-32, does hereby apply to stay all proceedings currently before the South Dakota Public Utilities Commission ("SDPUC") in TC10-026, pending the Court's review and final adjudication of this matter.

**FACTS**

On May 4, 2011, the SDPUC issued its "Order Denying Motion to Stay" ("Order").<sup>1</sup> In this Order, the SDPUC denied NAT's "Motion to Stay" based on the "tribal exhaustion doctrine." Among its bases for this denial, the SDPUC held that "no caselaw or statutory authority was cited demonstrating that [the tribal exhaustion doctrine] has been adopted by our state courts or by state law or that this doctrine is binding on a state administrative agency."

On May 17, 2011, NAT served its "Notice of Appeal" on the parties. NAT's appeal is venued in the First Judicial Circuit, Buffalo County, South Dakota.

<sup>1</sup> A copy of the SDPUC's Order is attached as "Exhibit 1" to the Affidavit of Scott R. Swier in Support of NAT's Application for Stay of Administrative Proceedings.

## LEGAL ANALYSIS

### I. Statutory Authority to Enter Stay of SDPUC Proceedings

SDCL § 1-26-32 provides:

An application to the circuit court for a stay of the agency's decision may be made only within ten days of the date of receipt or failure to accept delivery of the agency's decision. Upon receiving a timely application for a stay and notice of hearing thereon, the court may enter a temporary stay pending a hearing on the application. Following a hearing, the court may order a further stay, pending final decision of the court.

### II. The Court Should Grant NAT's Application for Stay

The Court should stay all proceedings currently before the SDPUC (TC10-026), pending the Court's review and final adjudication of the SDPUC's "Order," for the following reasons:

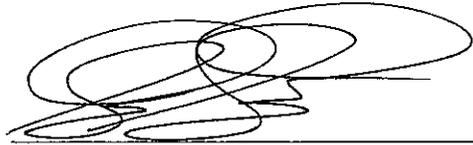
1. The SDPUC's "Order" encompasses a highly complex and technical legal issue on which the South Dakota Supreme Court has not provided an analysis and/or opinion.
2. Specifically, the SDPUC's "Order" encompasses the legal issue of whether South Dakota state courts and/or administrative agencies should recognize the "tribal exhaustion doctrine."
3. In *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987) and *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985), the United States Supreme Court announced the doctrine of "tribal court exhaustion." This doctrine is designed to protect the integrity of tribal courts, vital as those courts are to the exercise of tribal self-government. The federal courts have uniformly held that, under this doctrine, a party may not circumvent or attack a tribal court's jurisdiction by filing a duplicative federal court action. Because this dispute strikes at the very heart of tribal self-determination, it presents a classic case for consideration and application of the tribal court exhaustion doctrine.
4. As specifically referenced in its "Order," the SDPUC's "tribal exhaustion doctrine" determination was made without guidance from either a South Dakota Circuit Court or the South Dakota Supreme Court
5. The SDPUC's determination will, unless stayed by the Court, go into effect ten days after NAT's receipt of the "Order."

6. NAT is adversely affected and aggrieved by the SDPUC's "Order" because the applicability of the "tribal exhaustion doctrine" is an issue of first impression in South Dakota and NAT has been (and will be) subjected to voluminous and costly discovery requests and motions from Sprint.

WHEREFORE, NAT respectfully requests that the Court stay all proceedings currently before the SDPUC in TC10-026, pending the Court's review and final adjudication of the SDPUC's "Order."

Dated this 17<sup>th</sup> day of May, 2011.

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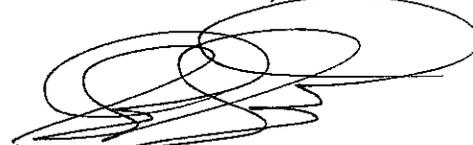
## NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Appellant Native American Telecom, LLC, will bring on for hearing the following:

1. *Native American Telecom, LLC's Application for Stay of Administrative Proceedings* before the Honorable Bruce V. Anderson at the *Brule County Courthouse in Chamberlain, South Dakota*, on the *7<sup>th</sup> day of June, 2011, at 1:30 p.m.*, or as soon thereafter as Appellant Native American Telecom, LLC, can be heard.

Dated this 17<sup>th</sup> day of May, 2011.

SWIER LAW FIRM, PROE. LLC



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on *May 17<sup>th</sup>, 2011*, a true and correct copy of the foregoing *NATIVE AMERICAN TELECOM, LLC's APPLICATION FOR STAY OF ADMINISTRATIVE PROCEEDINGS PENDING JUDICIAL REVIEW & NOTICE OF HEARING*, was served by *electronic mail* and *United States First Class mail* upon:

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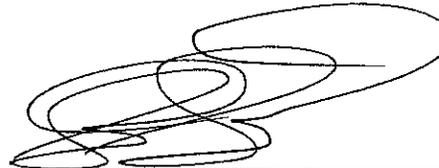
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A handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

Scott R. Swier