

Subject: Re: Civ. 15-000134 - James Valley vs. SDN - CIV 15-134 - Documents for James Valley's response to SDN's FCC filings

Date: Tuesday, February 27, 2018 at 4:34:27 PM Eastern Standard Time

From: Brian Donahoe

To: Jim Cremer

CC: Judge Scott Myren (scott.myren@ujs.state.sd.us), David Carter, Joseph Bowser, Martin Cuniff, John Nelson, Darla Pollman Rogers (D.Rogers@riterlaw.com), Meredith Moore

Attachments: image001.png

Your Honor,

To the extent that a ruling on this will be forthcoming by this Court, we believe there are some concerns that should be considered. SDN was not able to respond by the deadline set forth by Plaintiffs and respectfully request that certain matters be confirmed before a definite ruling is made on the request for the Court's approval. It was not clear to SDN how the Confidential or Attorneys' Eyes Only materials would be handled by Plaintiffs upon submission to the FCC. The SDN-AT&T Agreement of September, 2014 should remain confidential. At this time, SDN has not addressed the issue with AT&T. Without more context, it is not clear that the Plaintiffs' list of submissions would be appropriate for a Petition for Declaratory Ruling response. We don't expect to dictate to Plaintiffs what they can or cannot submit to the FCC in responding to the Petition for Expedited Declaratory Ruling, but do expect that the Protective Order would be honored, and would further expect that SDN would likewise be allowed to respond and submit any additional materials deemed necessary and appropriate. SDN has and will continue to treat materials under the Protective Order as confidential at the FCC.

Should the Court have questions or concerns, we stand ready to address them. Thank you.

Respectfully submitted,

Brian Donahoe



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On Feb 27, 2018, at 12:16 PM, Jim Cremer <jcremer@bantzlaw.com> wrote:

Judge Myren:

Plaintiffs are preparing to respond at the FCC to SDN's Petition for Expedite Declaratory Ruling and recent ex parte discussions with the Office of General

Counsel wherein SDN asked the General Counsel to ignore the Court's request for an amicus brief. In order to respond fully, we believe that it is necessary to provide the FCC with the materials that (1) establish the undisputed facts set forth in the amicus request letter; and (2) reveal certain false and/or misleading statements that SDN has made to the FCC.

Yesterday we sent the attached letter to SDN's counsel asking for them to let us know by Noon ET today if they objected to the specified materials being filed in the public record as a part of Plaintiffs' response. We have received no objection from SDN and therefore understand them not to object. However, before filing these materials, we would ask for the Court's consent so that there is no allegation that we are violating the Court's Protective Order.

Does the Court consent to Plaintiffs using the materials identified in the attached letter in connection with its response to SDN's Petition and ex parte conversations?

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<2018-02-26 Letter to Donahoe Re FCC Submission.pdf>