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February 9, 2007

E-FILING
Patricia Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre SD 57501-5070

RE: Sprint Communications Company, L.P. – Arbitration Consolidation:
ITC TC 06-175 GPGN File No. 8509-060584

Dear Ms. Van Gerpen:

Attached please find Sprint's Response to SDTA's Petition for Reconsideration and Clarification in the above-entitled matter. By copy of same, counsel have been served.

If you have any questions or desire any further information, please let me know.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosure
c: Meredith Moore/James Overcash/Paul Schudel via email
Thomas Moorman via email
Rich Coit via email
Kara Van Bockern/Harlan Best via email
Clients

BEFORE THE STATE OF SOUTH DAKOTA

PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF SPRINT COMMUNICATIONS COMPANY L.P. FOR ARBITRATION PURSUANT THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH **INTERSTATE TELECOMMUNICATIONS COOP.**	)	Docket No. TC06-175

SPRINT COMMUNICATIONS COMPANY L.P.'S RESPONSE TO SDTA'S PETITION FOR RECONSIDERATION AND CLARIFICATION

COMES NOW, Talbot J. Wieczorek of the law firm of Gunderson, Palmer, Goodsell and Nelson, LLP, and Monica M. Barone, counsel for Sprint Communications Company L.P. (hereinafter "Sprint"), and hereby submits this **RESPONSE TO SDTA'S PETITION FOR RECONSIDERATION AND CLARIFICATION.**

PRELIMINARY BACKGROUND

South Dakota Telecommunications Association (hereinafter "SDTA") has filed what it entitled a Petition for Reconsideration and Clarification. The Petition for Reconsideration and Clarification revolves around this Commission's ruling that SDTA should not be allowed to intervene as a party in arbitrations. The Commission found that SDTA failed to meet the required standards for party intervention. See Commission's Order of December 28, 2006.

While SDTA has entitled the motion a "Reconsideration," SDTA makes clear in its filing that it is not seeking reconsideration of this Order. Rather, SDTA in its request for relief stated it is seeking a clarification as to SDTA's ability to appear in the action pursuant to A.R.S.D. 20:10:01:15.06.

LEGAL ANALYSIS

A.R.S.D. 20:10:01:15.06 is entitled "Individuals right to appear." That rule provides in full as follows:

> Notwithstanding § 20:10:01:15.02, an individual, customer or ratepayer, or governmental representative shall be permitted to appear in person without filing a petition for leave to intervene, if the person makes a full disclosure of identity and the person's interest in the proceeding and if the contentions of the person are reasonably pertinent to the issues presented and the right to broaden the issues is disclaimed. Any person appearing pursuant to this section may not be afforded the status of a party to the proceedings.

Clearly, SDTA is not a customer, ratepayer, or governmental representative. As a South Dakota corporation, SDTA is arguably an individual under South Dakota law.

The regulation requires that an individual seeking to appear make a "full disclosure" of the individual's identity and interest in the proceeding and a listing of the individual's "*contentions reasonably pertinent to the issues presented.*" Finally, an individual must waive the right to broaden the issues. The rule concludes that such a person "may not be afforded the status of a party."

SDTA has failed to list its interest in these proceedings and failed to set forth its contentions reasonably pertinent to the issues in the proceedings. From previous SDTA filings, however, SDTA claims its interest is through its position as an organization that generally represents RLECs and addresses issues of competitive pressures on its members. This interest is tenuous at best given that SDTA is a trade organization.

Further, SDTA has not set forth its "contentions" in regards to these proceedings. SDTA has generally said it has concerns about these proceedings because the decision in these proceedings could ultimately apply to other SDTA members. Clearly, such broad descriptions of contention are inappropriate under this rule. The contentions must be limited to those that exist

between the parties as the rule specifically provides that somebody being allowed to appear under the rule cannot broaden the issues and must affirmatively disclaim any desire to broaden the issues. To date, SDTA has made no such claim.

In its Motion, SDTA requests that if it is allowed to appear, that the Commission consider the procedures adopted by the Minnesota Public Utilities Commission. While this Commission need not consider the Minnesota rules at all in determining the scope of its own rules, both the South Dakota rules which govern these proceedings and the Minnesota rules can and should be applied consistent with the Telecommunications Act.

With respect to the Minnesota Rules, it is worth noting that they do not allow third-party intervention. This is consistent with this Commission's order denying SDTA's request to intervene this proceeding. Specifically, the rules provide that with the exception of the Minnesota Department of Commerce and the Office of the Attorney General, no intervention is permitted. Others wishing to participate may attend hearings: 1) as observers, 2) file written comments and 3) request the opportunity for oral argument to the arbitrator or the commission as provided under part 7829.0900. (emphasis supplied) Minnesota Rule 7829.0900 states that a person may file comments in a proceeding before the Commission without requesting or obtaining party status. A participant may also be granted an opportunity for oral presentations.

The Minnesota rules also protect proprietary information from public disclosure. Minn. R. 7829.0500 provides that "[n]othing in this chapter requires the public disclosure of privileged proprietary information, trade secrets or other privileged information. They do not generally provide that non-parties can attend all hearings and prehearing conferences as observers, "subject to the same confidentiality constraints as the parties." The Minnesota Order SDTA cites in

support of its position which permitted non-parties access to confidential information is ten (10) years old and seems to have allowed more than the rules permit today.

Further, in this case, where the third-party "observer" is an association of rural LECs that may compete head on with Sprint in the future, it is imperative that Sprint's proprietary information be protected from disclosure. Such information if disclosed would allow SDTA *inter alia* to advise its clients based on information that is not generally known and kept secret for competitive purposes. The information could be used by SDTA to gain economic value and allow its clients to develop strategies to compete with Sprint. Sprint will not have access to any information of the SDTA members and would therefore be at a severe disadvantage to its competitors. This would undermine the very purpose of the Act which was to foster and not hinder competition. Moreover, South Dakota law does not permit such a result. Indeed, a right to appear does not give a right to review all materials exchanged between the parties nor should it allow an individual who does not have a direct interest in the proceedings to view all confidential exhibits and hear all confidential testimony.

While SDTA's lack of a direct interest in the proceedings raises a question as to whether SDTA has a right to appear under South Dakota Law at all, Sprint will not object to SDTA's appearance at the hearing as long as SDTA amends its Request setting forth with particularity what its interests are in the issues that remain between the arbitrating parties, SDTA affirmatively waives or disclaims any right to broaden the issues[1], that SDTA be barred from the hearing during any confidential testimony and SDTA be barred from reviewing any confidential exhibits. Sprint would not object to SDTA filing written comments and making an argument based on those written comments as long as SDTA's written and oral comments are limited to

[1] This would include an acknowledgement SDTA would not submit arguments that might imply or invoke situations of other SDTA members.

the issues that exist between the arbitrating parties and does not assert legal arguments or factual analysis unrelated to the situation that exists between the arbitrating parties.

CONCLUSION

The Commission should not allow SDTA's right to appear to expand to a defacto party status and thus, SDTA's right to appear should be limited to attending the actual hearing during nonconfidential testimony and that any comments or arguments that SDTA may be allowed to make or file be limited to the facts and issues as they exist between these parties.

DATED this 9 day of February, 2007.

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CERTIFICATE OF SERVICE

The undersigned certifes that on this 9 day of February 2007, a copy of the foregoing was served electronically and by first-class mail to:

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