

RICHARD A. CUTLER  
KENT R. CUTLER  
BRIAN J. DONAHOE \*#  
STEVEN J. SARBACKER \*\*  
JAYNA M. VOSS  
MICHAEL D. BORNITZ ‡  
TRENT A. SWANSON \*  
RYAN J. TAYLOR °  
KIMBERLY R. WASSINK  
MEREDITH A. MOORE  
DAVID L. EDWARDS  
NATHAN S. SCHOEN †  
ONNA B. DOMINIACK #  
NICHOLE MOHNING ROTHS \*  
WILLIAM D. SIMS #  
BOBBI L. THURY \*  
DANIEL J. DOYLE

**CUTLER & DONAHOE, LLP**  
**ATTORNEYS AT LAW**

Telephone (605) 335-4950

Fax (605) 335-4961

[www.cutlerlawfirm.com](http://www.cutlerlawfirm.com)

January 22, 2010

JEAN BROCKMUELLER, CPA (Inactive)  
BUSINESS MANAGER

\*Also licensed to practice  
in Minnesota

#Also licensed to practice  
in Iowa

‡Also licensed to practice  
in Nebraska

+Also licensed to practice  
in Missouri

% Also licensed to practice  
in Kansas

†Admitted to practice in  
United States Tax Court

\*Also licensed as a  
Certified Public Accountant

**VIA EMAIL TO [PATTY.VANGERPEN@STATE.SD.US](mailto:PATTY.VANGERPEN@STATE.SD.US)**

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501-5070

*Re: SDN v. Sprint v. Splitrock Properties, Inc., et al.*

Dear Ms. Van Gerpen:

Attached for filing in the above matter, please find the Answer of Splitrock Properties, Inc. to Third Party Complaint of Sprint Communications Company, LP.

As indicated above, this document has been sent to you via electronic mail in PDF form. If you have any questions or concerns regarding this document, please do not hesitate to contact me.

Best regards.

Sincerely,

CUTLER & DONAHOE, LLP



Meredith A. Moore  
For the Firm

MAM/cmc  
Attachment  
cc: Service List

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT  
OF SOUTH DAKOTA NETWORK, LLC,  
AGAINST SPRINT COMMUNICATIONS  
COMPANY, LP

TC09-098

IN THE MATTER OF THE THIRD PARTY  
COMPLAINT OF SPRINT  
COMMUNICATIONS COMPANY, LP  
AGAINST SPLITROCK PROPERTIES,  
INC., NORTHERN VALLEY  
COMMUNICATIONS, INC., SANCOM,  
INC., AND CAPITAL TELEPHONE  
COMPANY

**ANSWER OF SPLITROCK PROPERTIES,  
INC. TO THIRD PARTY  
COMPLAINT OF SPRINT  
COMMUNICATIONS COMPANY, LP**

COMES NOW the Third Party Defendant in the above-captioned action, Splitrock Properties, Inc. (“Splitrock”), by and through its undersigned counsel, and for its reply to the Third Party Complaint of Defendant and Third Party Plaintiff Sprint Communications Company, LP (“Sprint”), states and alleges as follows:

1. Splitrock denies each and every allegation contained in Defendant/Counterclaimant Qwest’s Counterclaims except those matters hereinafter specifically admitted.

**PARTIES**

2. As to Paragraph 1 of Sprint’s Third Party Complaint, Splitrock admits that Sprint is a limited partnership with its principal place of business in Overland Park, Kansas, and is authorized to conduct business in South Dakota.

3. As to Paragraph 2 of Sprint’s Third Party Complaint, Splitrock neither admits nor denies the same as the allegations set forth therein pertain to another Third Party Defendant, Sancom, Inc.

4. As to Paragraph 3 of Sprint’s Third Party Complaint, Splitrock admits the allegations contained therein. To the extent that Sprint’s reference to Splitrock’s ownership

interest in SDN is intended to suggest collusion, conspiracy or other inappropriate acts, Splitrock objects to such implication or inference.

5. As to Paragraph 4 of Sprint's Third Party Complaint, Splitrock neither admits nor denies the same as the allegations set forth therein pertain to another Third Party Defendant, Northern Valley Communications, Inc.

6. As to Paragraph 5 of Sprint's Third Party Complaint, Splitrock neither admits nor denies the same as the allegations set forth therein pertain to another Third Party Defendant, Capital Telephone Company.

#### **JURISDICTION**

7. As to Paragraph 6 of Sprint's Third Party Complaint, the allegations contained therein are legal conclusions which Splitrock neither admits nor denies.

#### **BACKGROUND**

8. As to Paragraph 7 of Sprint's Third Party Complaint, Splitrock admits that Sprint has been certificated by the Commission.

9. As to Paragraph 8 of Sprint's Third Party Complaint, Splitrock neither admits nor denies the allegations contained therein as they are legal conclusions to which no response is required.

10. As to Paragraph 9 of Sprint's Third Party Complaint, these factual and legal assertions are provided as a backdrop to Sprint's allegations and therefore do not require a response. However, to the extent they are material and relevant to establishing the validity of those allegations contained in Sprint's Third Party Complaint, Splitrock denies the same and remits Sprint to strict proof thereof.

11. As to Paragraph 10 of Sprint's Third Party Complaint, Splitrock admits that it is a Participating Telecommunications Company under SDN's South Dakota Tariff No. 2. As to the

remaining allegations contained in Paragraph 10, they do not relate to Splitrock and Splitrock therefore neither admits nor denies the same.

12. As to Paragraph 11 of Sprint's Third Party Complaint, Splitrock denies that it has engaged in "traffic pumping activities" and remits Sprint to strict proof thereof.

13. As to Paragraph 12 of Sprint's Third Party Complaint, the factual and legal assertions contained in this Paragraph are provided as a backdrop to Sprint's allegations and therefore do not require a response. However, to the extent they are material and relevant to establishing the validity of those allegations contained in Sprint's Third Party Complaint, Splitrock denies the same and remits Sprint to strict proof thereof.

14. As to Paragraph 13 of Sprint's Third Party Complaint, the factual and legal assertions contained in this Paragraph are provided as a backdrop to Sprint's allegations and therefore do not require a response. However, to the extent they are material and relevant to establishing the validity of those allegations contained in Sprint's Third Party Complaint, Splitrock denies the same and remits Sprint to strict proof thereof. Splitrock further objects to the injection of the Iowa Utilities Board's ruling in docket FCU 07-02 as that ruling is neither controlling on this Commission nor are the facts involved in that case analogous to the present situation.

15. As to Paragraph 14 of Sprint's Third Party Complaint, Splitrock admits that it filed suit against Sprint for unpaid access charges in Federal District Court, District of South Dakota, Southern Division. Splitrock further affirmatively asserts that Sprint has willfully and wrongfully, and continues to willfully and wrongfully withhold payment from Splitrock for legitimately billed access charges, thereby engaging in illegal self-help. As to the remainder of the allegations set forth in Paragraph 14, the factual and legal assertions contained therein are provided as a backdrop to Sprint's allegations and therefore do not require a response. However, to the extent they are material and relevant to establishing the validity of those allegations contained in Sprint's Third

Party Complaint, Splitrock denies the same and remits Sprint to strict proof thereof. Splitrock further objects to the injection of the Iowa Utilities Board's ruling in docket FCU 07-02 as that ruling is neither controlling on this Commission nor are the facts involved in that case analogous to the present situation.

16. As to Paragraph 15 of Sprint's Third Party Complaint, the allegations set forth therein constitute unsubstantiated factual allegations and incorrect legal conclusions, both of which Splitrock denies and remits Sprint to strict proof thereof.

17. As to Paragraph 16 of Sprint's Third Party Complaint, Splitrock denies that it has been engaged in traffic pumping since at least June of 2007. Splitrock is without sufficient information so as to admit or deny those allegations related to SDN, its billing practices and Sprint's response to the same. To the extent is require do these allegations, they constitute unsubstantiated factual allegations and incorrect legal conclusions, both of which Splitrock denies and remits Sprint to strict proof thereof.

18. As to Paragraph 17 of Sprint's Third Party Complaint, Splitrock is without sufficient information so as to admit or deny those allegations related to SDN, its billing practices and Sprint's response to the same. To the extent is require do these allegations, they constitute unsubstantiated factual allegations and incorrect legal conclusions, both of which Splitrock denies and remits Sprint to strict proof thereof.

**COUNT I  
DECLARATORY RULING**

19. As to Paragraph 18 of Sprint's Third Party Complaint, Splitrock re-alleges Paragraphs 1 through 18 as if fully set forth below.

20. As to Paragraphs 19 and 20 of Sprint's Third Party Complaint, the allegations set forth therein constitute contested factual and legal allegations and Splitrock therefore denies the same. Splitrock further affirmatively states that Sprint has not cited to any statute, contract or other

agreement which comprises the appropriate basis for a declaratory ruling under the facts and circumstances of this case. Therefore, Splitrock affirmatively asserts that there is nothing upon which this Commission can issue a declaratory ruling and such a request is wholly inappropriate and without basis. Splitrock further affirmatively states that SDN's Complaint can properly stand on its own and must be decided of its own merit before any decision on Sprint's Counterclaim becomes ripe. Splitrock further affirmatively states that, pursuant to SDCL § 15-6-42(b), Sprint's Third Party Complaint should be bifurcated or severed from SDN's Complaint against Sprint and stayed pending resolution of Sprint's Third Party Complaint.

**COUNT II**  
**LIABILITY FOR AMOUNTS BILLED BY SDN**

21. As to Paragraph 21 of Sprint's Third Party Complaint, Splitrock re-alleges Paragraphs 1 through 20 as if fully set forth below.

22. As to Paragraphs 22 and 23 of Sprint's Third Party Complaint, the allegations set forth therein constitute contested factual and legal allegations and Splitrock therefore denies the same. Splitrock further affirmatively states that SDN's Complaint can properly stand on its own and must be decided of its own merit before any decision on Sprint's Counterclaim becomes ripe. Splitrock further affirmatively states that, pursuant to SDCL § 15-6-42(b), Sprint's Third Party Complaint should be bifurcated or severed from SDN's Complaint against Sprint and stayed pending resolution of Sprint's Third Party Complaint.

**COUNT III**  
**REFUND OF AMOUNTS UNLAWFULLY BILLED**  
**BY CAPITAL PURSUANT TO STATE ACCESS TARIFF**

23. As to Paragraph 24 of Sprint's Third Party Complaint, Splitrock re-alleges Paragraphs 1 through 22 as if fully set forth below.

24. As to Paragraphs 25 through 28 of Sprint's Third Party Complaint, the allegations in these Paragraphs do not relate to Splitrock and Splitrock is without sufficient information so as to admit or deny the same, and therefore denies the same.

#### **PRAYER FOR RELIEF**

25. As to Sprint's Prayer for Relief, Splitrock denies that Sprint is entitled to the remedies and damages to which it claims entitlement.

#### **AFFIRMATIVE DEFENSES**

26. Sprint's Third Party Complaint fails to state a cause of action upon which relief may be granted against Splitrock.

27. In addition or alternatively, as an affirmative defense, Splitrock alleges that Sprint's own acts or omissions have caused or contributed to the circumstances and damages alleged in its Third Party Complaint to an extent to bar all recovery by Sprint.

28. In addition or alternatively, as an affirmative defense, Splitrock alleges that Sprint's claims are barred by the equitable principles of waiver, estoppel, unclean hands, laches and *in pari delicto*.

29. In addition or alternatively, as an affirmative defense, Splitrock alleges that Sprint has failed to mitigate its damages, assuming Sprint proves it is entitled to any, which Splitrock expressly denies.

30. In addition or alternatively, as an affirmative defense, Splitrock alleges that Sprint's claims are barred by binding Federal Communications Commission precedent, including, but not limited to, FCC 07-175, Qwest Communications Corp. v. Farmers & Merchants Mut. Tel. Co., Memorandum Opinion and Order, (Oct. 2, 2007), *recon. granted in part*, FCC 08-29, Order on Reconsideration (Jan. 29, 2008) and Second Order on Reconsideration, FCC 09-103, EB-07-MD-001 (Nov. 25, 2009).

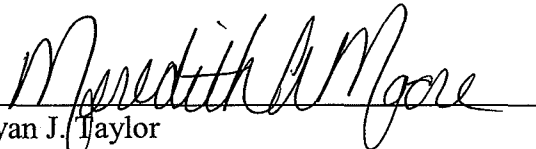
31. In addition or alternatively, as an affirmative defense, Splitrock alleges that if it is found to be liable for any of Qwest's claimed damages, which it expressly denies, Splitrock is entitled to contribution and indemnity from the third parties not yet named herein.

32. In addition or alternative, as an affirmative defense, Splitrock alleges that Sprint's claims are not ripe until such time as SDN's claims against Sprint have been fully adjudicated and, therefore, Splitrock is entitled to have this Third Party Complaint severed from SDN's Complaint against Sprint in accordance with SDCL § 15-6-42(b) .

WHEREFORE, Splitrock prays that the Third Party Complaint of Defendant and Third Party Plaintiff Sprint be dismissed.

Dated at Sioux Falls, South Dakota, this 22<sup>nd</sup> day of January, 2010.

CUTLER & DONAHOE, LLP  
Attorneys at Law



Ryan J. Taylor  
Meredith A. Moore  
Onna B. Dominiack  
100 N. Phillips Ave., 9th Floor  
PO Box 1400  
Sioux Falls, SD 57101-1400  
Telephone: (605) 335-4950  
Facsimile: (605) 335-4966  
*Attorneys for Plaintiff Splitrock Properties, Inc.*