

# **EXHIBIT B**



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March 6, 2012

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**Re: In the Matter of the Complaint of South Dakota Network, LLC Against  
Sprint Communications Company L.P.  
Docket No. TC09-098**

Dear David:

On Friday, February 17, 2012 we spoke about the scope of the Rule 30(b)(6) deposition topics contained in Northern Valley's October 31, 2011 deposition notice to Sprint Communications Company L.P. ("Sprint").

My notes reflect that you clarified or limited the scope of the following topics:

- **Topic 1:** As written, this topic extends beyond Northern Valley and its CSPs.<sup>1</sup> We understand Sprint's witness needs to have a general familiarity with the investigations done regarding other South Dakota LECs. We also understand Northern Valley is not seeking to obtain privileged information, and so we will not prepare Sprint's witness to discuss privileged investigations.
- **Topics 11 and 12** were limited to CSPs that have received traffic through Northern Valley.
- **Topic 15** does not require Sprint's witness to testify as to what TEOCO did, just what Sprint engaged TEOCO to do.
- With respect to **Topic 21**, the word "ever" does not expand the question to matters before January of 2005.
- With respect to **Topic 26**, the term "claims" should be read as "assertions."
- With respect to **Topics 22 and 27-37**, you acknowledged that Sprint would not be required to conduct data analyses that have not already been done.

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<sup>1</sup> "Calling Service Providers" as defined in your notice.

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- To the extent the questions contemplate information related to interstate traffic or interstate revenues, you acknowledged that Sprint would have no obligation to prepare a witness with respect to such information, but that Northern Valley reserves the right to seek this discovery in federal court.
- You confirmed that you intended to define “Sprint” to include all entities under the Sprint Nextel Corp. umbrella, even though only Sprint Communications Company L.P. is a party, and all of those entities’ inside and outside lawyers.

You were not prepared to or able to explain to me, on a topic-by-topic basis, how the information requested is relevant to the claims pending before the Commission. Instead, you suggested that South Dakota law allows Northern Valley to conduct discovery on matters not relevant to claims or defenses pled by the parties. To the contrary, SDCL § 15-6-26(b)(1) provides that a party may conduct discovery on any matter relevant to the subject matter of the litigation “whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” That section goes on to require that discovery be designed to lead to the discovery of admissible evidence. *Id.*; see also *Kaarup v. St. Paul Fire & Marine Ins. Co.*, 436 N.W.2d 17, 20 (S.D. 1989) (affirming denial of discovery that was not related to the subject matter of the litigation, and would not likely lead to admissible evidence). And, at hearing, a fact is admissible only if it is relevant, which requires that it prove something “of consequence to the determination of the action.” SDCL § 91-12-1. As the South Dakota Supreme Court has stated, “[n]o overbroad or ‘cart blanc’ disclosure, unduly burdensome or lacking in specificity Please reconsider your position that Northern Valley can conduct discovery for the purpose of obtaining facts not relevant to pending claims.

There are two major questions for the Commission to answer as it adjudicates the pending claims, neither of which can be decided based on Sprint’s business relationships, motives, or revenues. First, Sprint has alleged that, based on Northern Valley’s relationships with its CCCs, the calls at issue are not subject to Northern Valley’s and SDN’s tariffed intrastate access charges. (Northern Valley’s Counterclaim Count I raises these same issues.) Those claims cannot turn on Sprint’s business practices. Second, Northern Valley’s Counterclaim Count I asks the Commission to set a rate in the event intrastate calls are not subject to Northern Valley’s access charges.<sup>2</sup> Yet, there is no statutory basis for the Commission to set a rate based on Sprint’s motives or revenue information. We reject your assertion otherwise.

It is important to limit Rule 30(b)(6) topics because it is very burdensome to prepare a Rule 30(b)(6) witness. A witness must conduct an appropriate level of investigation to find the knowledge of the company, and our witnesses will take this obligation seriously. However, there

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<sup>2</sup> This is what you continue to call your “unjust enrichment claim,” despite representing to the Commission that Northern Valley is pursuing only statutory relief.

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is no reason a litigant should be required to expend significant time preparing to give testimony that cannot support claims and defenses, and will not lead to such evidence.

Having addressed those preliminary matters, the specific comments, questions, and objections to the topics are as follows:

- **Topic 4:** Sprint objects to preparing a witness to testify on the contents or meaning of Northern Valley's tariffs. Sprint will produce a witness to testify about its intrastate disputes and the dispute resolution tariff language related to those disputes.
- **Topics 5 and 6** seek information with respect to Sprint's relationships (if any) with CSPs, and any conferencing services offered by Sprint and CSPs. Sprint objects to the extent the definition of "Sprint" extends beyond the Sprint entity that is a party in this case. In addition, the facts that would be developed with respect to this question are not relevant to determining whether Northern Valley's intrastate tariff applies, and cannot be used to set a rate in accordance with Northern Valley's Counterclaim Count II.
- **Topic 7** asks that Sprint prepare a witness to testify to all communications between Sprint and other IXCs regarding CSP activities in South Dakota. It also asks for information regarding Sprint's use of IXC networks to route calls to Northern Valley under least-cost routing contracts. Again, the definition of "Sprint" is too broad to the extent it extends beyond the named party in this case. Second, this issue will not generate information that can be used to determine whether Northern Valley's intrastate tariff applies, or to set a rate in the event it does not. In fact, calls sent to other IXCs are not within the scope of the billing disputes that are to be resolved in this case.
- With respect to **Topic 9**, Sprint's witness will be able to testify regarding communications between business representatives of Sprint and Northern Valley. That witness will not be able to testify as to communications between Sprint's inside or outside lawyers and Northern Valley's inside or outside lawyers.
- **Topic 10** relates to call blocking in South Dakota. Sprint has already provided a discovery response certifying that there has been no call blocking of CSP traffic in South Dakota. *See* Sprint's Resp. to Northern Valley's Document Request No. 10. Now you are asking a witness to be prepared on Sprint's "consideration" of call blocking. There is absolutely no relevance to that line of questions. The second half of Topic 10 asks about consideration of or delivering of CSP traffic to IXCs under least-cost routing arrangements where Sprint "knew or suspected" the IXC did not have the capacity to deliver the traffic. Again, those calls, if they exist, were not

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delivered by Sprint through SDN and then delivered to Northern Valley, and thus did not generate a billing dispute within the scope of the pleadings in this case.

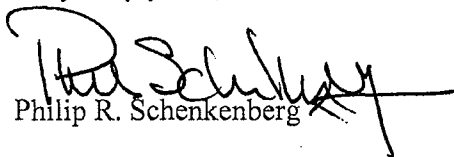
- **Topic 13** relates to Sprint's relationship with its billing vendor (as do Topics 11 and 12). Topics 11 and 12 are appropriate because they ask for information about the work a vendor did that relates to Sprint's calculation of and submission of disputes in this case. Topic 13, however, asks for the compensation structure between Sprint and its third-party vendor. When I asked you to tie this to a claim or defense in this case, you said Northern Valley deserves to know Sprint's motive in disputing the traffic. Yet, under the filed rate doctrine, whether a call is subject to tariff-based compensation is based on facts that exist when the call is made, before a dispute is filed. A party's motive in disputing a subsequent bill has no bearing on whether the tariff applied. And, your Counterclaim Count II assumes the tariff does not apply, and thus that Sprint's disputes were justified, making its motive irrelevant.
- **Topic 21:** You indicated that Topic 21 was intended to allow Northern Valley to discover whether Sprint sells conferencing services, how it earns revenue from such services, and what revenues it has earned since 2005. However, you are unable to explain how this could be used to either determine whether Northern Valley's tariff applies, or to set a rate in the event they do not. In addition, the definition of "Sprint" extends beyond the party in this case.
- **Topic 22** asks for information regarding Sprint's customers' demand for services of CSPs. You apparently believe this information could be used by the Commission to set an unjust enrichment rate in accordance with your Counterclaim Count II. Sprint disagrees. In addition, Sprint objects to this topic to the extent it extends beyond (1) the party to this case and (2) intrastate traffic delivered by Sprint to Northern Valley.
- **Topic 23**, on its terms, asks for information regarding Sprint's relationships with other LECs related to calls delivered to conferencing service providers. You are unable to tie this information to a claim or defense in this case or to explain how the information would either be admissible or lead to the discovery of admissible evidence.
- **Topic 24** asks that Sprint prepare a witness to testify about all communications between Sprint and numerous categories of governmental employees regarding CSPs, traffic pumping, or access stimulation. You are unable to tie this information to a claim or defense in this case or to explain how the information would either be admissible or lead to the discovery of admissible evidence.

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- **Topic 25** relates to least-cost routing agreements between Sprint and other IXC's. This information cannot be used to determine whether Northern Valley's intrastate tariff applies, or to set a rate in the event it does not.
- **Topic 26** asks for Sprint's non-privileged information about the types of individuals and entities that utilize CSP services, and the claims and general assertions relating to the nature of services provided by CSPs. Again, this information cannot be used to determine whether Northern Valley's intrastate tariff applies or to set a rate in the event it does not.
- **Topics 27-37** are captioned "Provisional Topics Relating to Northern Valley's Unjust Enrichment Claims." As we discussed in detail, Northern Valley has no unjust enrichment claim, and represented to the Commission that it was seeking to enforce only statutory rights. The Commission's ability to set a just and reasonable rate emanates from a statute that contemplates setting rates based on the costs of a regulated service provider, which in this case would be Northern Valley. This is far different in nature than a claim in equity considered by a court, which could examine the behavior of the party receiving a service to determine whether principles of equity require compensation, and set such compensation. We will ask the Commission to decide that it does not have any statutory authority to consider Sprint's revenues or business operations in setting a rate for an intrastate noncompetitive "service" offered by Northern Valley.
- In addition, as we discussed, some of the information contained within **Topics 27-37** is simply not available to Sprint. We are, in many cases, in the process of documenting that for the purposes of responding to Northern Valley's motion to compel.

If you have any further thoughts with respect to the issues raised in this letter or discussed during our call on Friday, please do not hesitate to contact me. We continue to evaluate Sprint's ability to provide a witness on these topics and will raise other issues as they arise. Sprint intends to move for a protective order with respect to any matters we are not able to resolve.

Very truly yours,

  
Philip R. Schenkenberg

PRS/smo  
cc: Sprint Communications Company L.P.  
James Cremer, Esq.