



319 South Coteau Street
P.O. Box 280
Pierre, SD 57501

Phone: 605-224-5825
Fax: 605-224-7102
www.riterlaw.com

June 7, 2010

Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Re: In the Matter of the Complaint of South Dakota
Network, LLC, against Sprint Communications
Company, LP
Docket No. TC09-098

Dear Ms. Van Gerpen:

Enclosed for filing in the above docket, please find the Stipulation to File and Serve Amended Complaint and a Certificate of Service.

Please call me if you should have questions.

Thank you.

Sincerely yours,

RITER, ROGERS, WATTIER &
NORTHTRUP, LLP

By: 
Darla Pollman Rogers

DPR-dk

Enclosure

Cc: Parties of Interest

Robert C. Riter, Jr.
Margo D. Northrup

Jerry L. Wattier
Lindsey Riter-Rapp

Darla Pollman Rogers
Robert D. Hofer, Of Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER TC09-098

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

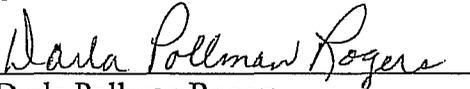
STIPULATION TO FILE
AND SERVE
AMENDED COMPLAINT

COME NOW, the Complainant, South Dakota Network, LLC (“SDN”), and the parties in this docket, to-wit:

Sprint Communications Company, LP
Sancom, Inc.
Splitrock Properties, Inc.
Northern Valley Communications, L.L.C.

by and through their respective undersigned counsel, and hereby stipulate and agree that Complainant may file and serve an Amended Complaint in the form reflected in the Amended Complaint attached hereto as Exhibit A.

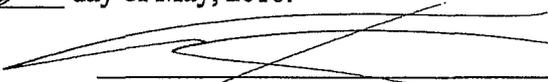
DATED this 24th day of May, 2010.


Darla Pollman Rogers
Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
PO Box 280
Pierre, SD 57501
Telephone (605) 224-5825
Fax (605) 224-7102

William P. Heaston
VP, Legal & Regulatory
South Dakota Network, LLC
2900 W. 10th Street
Sioux Falls, SD 57104

Attorneys for SDN

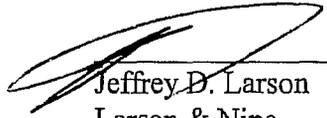
DATED this 25th day of May, 2010.


Talbot J. Wieczorek
Gunderson Palmer Goodsell & Nelson
P. O. Box 8045
Rapid City, SD 57709-8045

Philip Schenkenberg
Briggs and Morgan, P.A.
80 South Eighth Street
2200 IDS Center
Minneapolis, MN 55402

Attorneys for Sprint

DATED this 29 day of May, 2010.



Jeffrey D. Larson
Larson & Nipe
P. O. Box 277
Woonsocket, SD 57385

Attorney for Sancom, Inc.

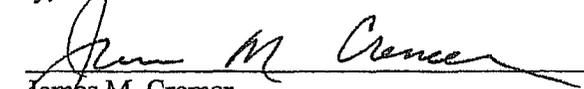
DATED this 24 day of May, 2010.



Meredith A. Moore
Cutler & Donahoe, LLP
100 N. Phillips Ave., 9th Floor
Sioux Falls, SD 57104-6725

Attorney for Splitrock Properties, Inc.

DATED this 28th day of May, 2010.



James M. Cremer
Bantz, Gosch & Cremer, LLC
P. O. Box 970
Aberdeen, SD 57402-0970

Attorney for Northern Valley
Communications, L.L.C.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NO. TC09-098

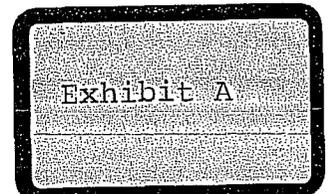
IN THE MATTER OF THE)
COMPLAINT OF SOUTH DAKOTA)
NETWORK, LLC, AGAINST SPRINT)
COMMUNICATIONS COMPANY,)
LP)
)
)
)

AMENDED
COMPLAINT

South Dakota Network, LLC (hereinafter “SDN”), by and through its attorneys of record, Darla Pollman Rogers, of Riter, Rogers, Wattier & Northrup, LLC, Pierre, South Dakota, and William P. Heaston of Sioux Falls, South Dakota hereby submits this Complaint against Sprint Communications Company, LP (“Sprint”) for (1) failing to pay intrastate centralized equal access charges at the rates approved by the South Dakota Public Utilities Commission (“Commission”) and set forth in the SDN Tariff on file with the Commission; (2) failing to immediately pay undisputed portions of SDN’s invoices, as required by SDN’s Tariff; and (3) for payment by Sprint of SDN’s costs of action, reasonable attorneys fees incurred by SDN, and for twice the amount of damages sustained by SDN, if SDN is required to recover its damages by suit or on appeal. This is a Complaint pursuant to ARSD 20:10:01:07.01 and SDCL Ch. 49-13.

BACKGROUND

1. SDN is a limited liability company with its principal place of business at 2900 West 10th Street, Sioux Falls, South Dakota, 57104.



2. SDN provides various telecommunications services, including but not limited to switched access services and lease of facilities, to various interexchange carriers.

3. Sprint is a corporation with its principal office of business at 6450 Sprint Parkway, Overland Park, Kansas 66251, and is authorized to do business in the state of South Dakota, including the provision of interexchange telecommunications services to various residential and business customers in South Dakota.

COUNT I

4. SDN incorporates paragraphs one (1) through three (3) as previously alleged.

5. Pursuant to SDN's applicable tariffs, Sprint ordered, used, and benefited from intrastate and interstate centralized equal access service (CEAS) from SDN through SDN's tandem switch in Sioux Falls, South Dakota. SDN provided originating and terminating access services to Sprint for customers who selected Sprint as their interexchange carrier, for the period from April 1, 2009 to the present time, pursuant to SDN's tariffs.

6. Sprint was charged for the intrastate centralized equal access service based upon the rates and conditions established in the SDN tariff, which is approved by and on file with the Commission.

7. SDN sent monthly invoices to Sprint for CEAS, but Sprint has failed to pay for any CEAS for the months of April through December 2009 and January through the date of this Complaint.

8. By receiving and utilizing CEAS, Sprint is obligated to pay for that service not only under the tariff, but also under applicable South Dakota law, as Sprint is responsible for paying its obligation for the value of the benefit conferred; otherwise Sprint would be unjustly enriched.

9. Sprint's actions of refusing to pay for CEAS provided by SDN are unjust and unreasonable, and result in damages to SDN.

10. SDN has contacted Sprint and demanded payment of said invoices, but Sprint continues to refuse to pay for the services received.

11. Sprint owes SDN a total of \$503,568.33 for intrastate minutes of use as of April 1, 2010.¹ This amount includes unpaid intrastate CEAS for April through December of 2009 (invoiced in May, 2009 through January, 2010) and January, 2010 through the date of the Complaint (invoiced in February, 2010 through the date of this Complaint), which includes late payment penalties as authorized in SDN's Tariff, as set forth in the summary of invoices attached hereto as Exhibit A (Confidential). SDN is also entitled to interest at the statutory rate for all unpaid balances to include future months of nonpayment to be proven at the time of the hearing in this docket.

COUNT II

12. SDN incorporates paragraphs one (1) through eleven (11) as previously alleged.

13. SDN's South Dakota Tariff provides that "[I]n the event of a dispute concerning the bill, SDN may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill." (SDN Tariff, Section 2.4.1(B)(2)).

¹ Sprint owes SDN a total of \$1,647,677.48 as of April 1, 2010 for intrastate and interstate CEAS for April 2009 through April 1, 2010. (see Exhibit A (Confidential)).

14. SDN has contacted Sprint and demanded payment of the undisputed portion of the invoices, but Sprint continues to refuse to pay for even the undisputed portion of the invoices.²

15. In response to the April 1, 2009 SDN invoice, Sprint made a “back claim” for dates June of 2007 through April of 2009, in the amount of \$1,704,262.08. The back claim did not distinguish between intrastate and interstate charges.

16. With regard to the undisputed portion of the SDN invoices dated May 2009 through April, 2010, Sprint has engaged in an unauthorized and illegal self-help “accounting mechanism” whereby Sprint applies a “credit” to the disputed portion of the invoices (including the back claim amount), rather than paying the undisputed portion of the invoices, as demanded by SDN.

17. Sprint’s refusal to pay for the undisputed portion of the service provided by SDN constitutes a deliberate failure by Sprint to comply with the procedures contained in SDN’s Tariff, on file with and approved by the Commission.

COUNT III³

18. SDN incorporates paragraphs one (1) through seventeen (17) as previously alleged.

19. Sprint’s refusal to pay SDN’s tariffed access rates and refusal to pay the undisputed amounts of SDN’s invoices constitutes omission by Sprint of doing an act or thing required to be done, that is, payment of tariffed rates for receipt of CEAS and failure to follow SDN’s tariff with regard to the undisputed amount of invoices.

² The undisputed portion of the invoices for May, 2009, through April, 2010, is \$716,105.52 (see Exhibit A (Confidential)).

³ In an Order dated February 23, 2010, the Commission dismissed this Count without prejudice. SDN only includes this Count in the Amended Complaint so as not to waive the arguments previously made and any right to appeal it may have in reference to the ruling.

20. Pursuant to SDCL 49-13-14.1, if SDN is ultimately required to recover its damages awarded herein by suit or on appeal, Sprint shall be liable to SDN for twice the amount of the damages sustained by SDN, for SDN's costs of action, and for reasonable attorneys fees incurred by SDN.

WHEREFORE, SDN prays for judgment against Sprint as follows:

- A. Payment for unpaid intrastate switched access services and late payment penalties;
- B. Immediate payment of the undisputed portion of invoices;
- C. For SDN's costs and expenses herein;
- D. For pre-judgment interest and post-judgment interest on the unpaid balances herein; and
- E. For such other and further relief as the Commission deems just.

DATED this _____ day of May, 2010.

Darla Pollman Rogers
Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
PO Box 280
Pierre, SD 57501
Telephone (605) 224-5825
Fax (605) 224-7102

William P. Heaston
VP, Legal & Regulatory
South Dakota Network, LLC
2900 W. 10th Street
Sioux Falls, SD 57104

Attorneys for SDN

South Dakota Network, LLC, hereby affirms that the statements of fact above are accurate to the best of its knowledge.

South Dakota Network, LLC:

By: _____
Mark Shlanta, CEO

CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of June, 2010, I served electronically a true and correct copy of South Dakota Network, LLC's Amended Complaint in the above-entitled matter, by email to:

MS PATRICIA VAN GERPEN
EXECUTIVE DIRECTOR
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
patty.vangerpen@state.sd.us

MS KAREN E CREMER
STAFF ATTORNEY
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
karen.cremer@state.sd.us

MS TERRI LABRIE BAKER
STAFF ANALYST
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
terri.labriebaker@state.sd.us

MR WILLIAM P HEASTON
VP, LEGAL AND REGULATORY
SOUTH DAKOTA NETWORK, LLC
2900 WEST 10TH STREET
SIOUX FALLS SD 57104
bill.heaston@sdncommunications.com

MR TALBOT J WIECZOREK
ATTORNEY AT LAW
GUNDERSON PALMER GOODSSELL & NELSON
PO BOX 8045
RAPID CITY SD 57709-8045
tjw@gpnlaw.com

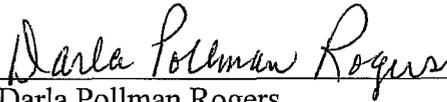
MR PHILIP SCHENKENBERG
ATTORNEY AT LAW
BRIGGS AND MORGAN P.A.
80 SOUTH EIGHTH STREET
2200 IDS CENTER
MINNEAPOLIS MN 55402
pschenkenberg@briggs.com

MR JEFFREY D LARSON
ATTORNEY
LARSON & NIPE
PO BOX 277
WOONSOCKET SD 57385
jdlarson@santel.net

MS MEREDITH A MOORE
ATTORNEY
CUTLER & DONAHOE LLP
100 N PHILLIPS AVE 9TH FLOOR
SIOUX FALLS SD 57104-6725
meredithm@cutlerlawfirm.com

MR JAMES M CREMER
ATTORNEY
BANTZ GOSCH & CREMER LLC
PO BOX 970
ABERDEEN SD 57402-0970
jcremer@bantzlzaw.com

DATED this 7th day of June, 2010.



Darla Pollman Rogers