

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)
)
)
)

AFFIDAVIT

AFFIDAVIT OF MARK SHLANTA

COMES NOW, Mark Shlanta, after being first duly sworn under oath, deposes and states as follows:

1. My name is Mark Shlanta. I am the Chief Executive Officer of South Dakota Network, LLC (SDN). I submit this Affidavit in support of SDN's Motion for Summary Judgment and Memorandum in Support thereof filed in the above named docket.
2. SDN is the centralized equal access provider for many rural local exchange carriers (LECs) in South Dakota. Centralized Equal Access (CEA) allows end users to automatically select a presubscribed long distance carrier for toll calls via a centralized presubscription look-up and concentration service for delivery of traffic of end user long distance traffic to that end user's chosen service provider. CEA refers to the ability of an end user customer to dial the number 1 plus the 10 digit telephone number to select the provider of that customer's long distance service.
3. SDN provides equal access and switched transport services to interexchange carriers (IXCs), which allows the IXCs to access the LECs that subtend SDN's

Access Tandem. SDN charges centralized equal access switching and transport fees to IXCs for the tandem switched access services it provides, the provision and pricing of which services are governed by SDN's federal and state tariffs.

4. As a common carrier and provider of access tandem services, SDN's Sioux Falls access tandem is designated as such in the Local Exchange Route Guide (LERG) and accordingly, provides tandem functionality to any participating carrier (LEC and/or CLEC) that chooses to utilize its services for purposes of exchanging traffic with interconnected long distance carriers.
5. Sprint is an IXC authorized to do business in the State of South Dakota. Sprint, as an IXC, ordered CEA services pursuant to the SDN intrastate tariff to originate and terminate long distance or toll calls from its customers that are either served on an originating basis from LECs that use the SDN CEA service to connect with IXCs or seek to complete calls to numbers served by those same LECs. SDN as the CEA provider, supplied the originating and terminating CEA services provided for under its tariff and accordingly, charged Sprint for intrastate CEA charges.
6. SDN sent a monthly invoice to Sprint for these CEA charges for many years. SDN charged the amounts authorized in its intrastate access tariff for CEA service. (SDN Tariff, Section 5.7.1). Sprint paid these invoices in full until April of 2009.
7. With regard to SDN's May 2009 invoice for April services, Sprint disputed the portion of the traffic it claimed was "stimulated" or "pumped" traffic. (See Attachment A). In addition to disputing a portion of SDN's current billing for

April 2009 CEA services, Sprint's dispute notice also attempted to dispute past invoices, i.e. from June 2007 through April 2009, by requesting a refund from SDN for payments Sprint made to SDN for traffic delivered from Sprint, through SDN, to Sancom, Splitrock, Northern Valley, and Capital. (See Answer of Sprint, ¶ 16).

8. The traffic was delivered to SDN via Feature Group D (FGD) access services ordered by Sprint. FGD service establishes the connection path between an IXC and the SDN tandem switch, and in this case, was ordered by Sprint pursuant to SDN's tariff (SDN Tariff, Section 5.2).
9. Sprint provided SDN with a breakdown of what it refers to as "undisputed" and "disputed" portions of the SDN invoices. The disputed portion of the invoices purports to be related to traffic Sprint identifies as "pumped" traffic that Sprint alleges is stimulated by illegal activities of the LEC to which the traffic is terminated. The undisputed portion of the invoices is for what Sprint characterizes as "unpumped" traffic (See Attachment A). Sprint has arbitrarily segregated the traffic as "pumped" and "unpumped" without providing the appropriate call detail records to verify the classification, despite requests for the information by SDN.
10. All of the traffic in question traversed FGD facilities and was switched through SDN's CEA tandem switch.
11. Since May of 2009 Sprint has paid for neither the disputed nor the undisputed traffic because Sprint claims to offset earlier payments it made to SDN (June 2007 to April 2009) by withholding payment of undisputed current charges. As

of April 1, 2010, Sprint owed a total of \$503,568.33 for intrastate minutes of use and this amount grows on a monthly basis¹

12. Sprint delivers the terminating traffic to the SDN CEA tandem switch, representing to SDN that it is switched access traffic as defined by SDN's Tariff to be terminated to the LEC identified in the data flow (or signaling) that is inherent with each call. As a common carrier, SDN does not screen or otherwise analyze the nature of this traffic in the performance of its CEA functions; SDN is only aware at the time the traffic is delivered to SDN for transport to the terminating LEC that Sprint has sent this traffic using FGD services Sprint has ordered from SDN with call information sufficient for SDN to terminate the call to the appropriate LEC. SDN does not know why Sprint's end user chose to establish this communication. SDN provides CEA services for all access traffic delivered to its tandem switch.
13. SDN made demand for the total amount of the invoices. SDN has also repeatedly demanded immediate payment of the undisputed portion of the invoices. (See Attachment B). Sprint has refused to pay not only the disputed portion of the invoices, related to alleged "pumped traffic", but also the undisputed portion of the invoices, related to "unpumped traffic". Instead of paying the undisputed portion of each invoice, as required by the tariff (SDN Tariff, Section 2.4.4(B)(2)), and as demanded by SDN, Sprint has engaged in an unauthorized and illegal self-help "accounting mechanism" whereby Sprint applies the undisputed portion of the current invoices as a "credit" to the disputed portion of

¹ As of July 31, 2010, Sprint owes SDN \$656,756.46 for intrastate minutes of use excluding late charges and \$2,298,936.90 total on all unpaid invoices dated May 1, 2009 through August 1, 2010, which amount includes late charges authorized by SDN's tariff (SDN Tariff, Section 2.4.1).

the invoices, including the back claim amount. (Attachment A) Sprint has not made any payments to SDN since April of 2009, although it continues to receive CEA services each month.

14. SDN is authorized under its tariff to disconnect its service to Sprint but has chosen not to so at this point because it would adversely affect many customers in South Dakota.

Dated this 31 of August, 2010.

Mark Shlanta

Mark Shlanta

Subscribed and sworn to before me this 31 day of August, 2010.

Margo D Northrup

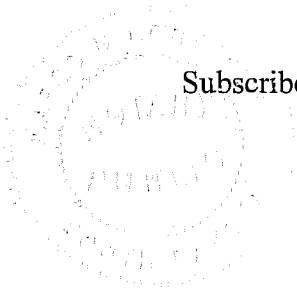
Notary Public

My commission expires:

Margo D. Northrup

Notary Print Name: _____

My Commission Expires 11-5-2015



ATTACHMENT A

Vendor	Vendor Location	EAN	Invoice	Bill Date	Claim #	Act	User	Code	Amount	Dispute Notes
SOUTH DAKOTA NETWORK , LLC	SOUTH DAKOTA NETWORK	0333FGD8812	0904CIC 0333 FGD	4/1/2009	10642860000	Create	Amy S. Clouser	912	\$1,704,262.08	Backclaim for dates 06/07-04/09: Sprint objects to the nature of certain traffic for which South Dakota Network is billing access charges and Sprint disputes these charges in full. It is Sprint's position that traffic volumes associated with, but not limited to; artificially stimulated usage, chat lines, free conferencing, and revenue sharing are not subject to access charges. If you have any questions please call Julie Walker at 913-315-5435 or email at julie.a.walker@sprint.com
SOUTH DAKOTA NETWORK , LLC	SOUTH DAKOTA NETWORK	0333FGD8812	0905CIC 0333 FGD	5/1/2009	10717720000	Create	Amy S. Clouser	912	\$52,153.96	Dispute for invoice date 05/09: Sprint objects to the nature of certain traffic for which South Dakota Network is billing access charges and Sprint disputes these charges in full. It is Sprint's position that traffic volumes associated with, but not limited to; artificially stimulated usage, chat lines, free conferencing, and revenue sharing are not subject to access charges. If you have any questions please call Julie Walker at 913-315-5435 or email at julie.a.walker@sprint.com

ATTACHMENT B



SDN COMMUNICATIONS

June 12, 2009

BY ELECTRONIC MAIL
julie.a.walker@sprint.com

Julie Walker
Sprint – Access Verification
KSOPHL0412
6500 Sprint Parkway
Overland Park, KS 66251

RE: Dispute Notice

Dear Ms. Walker:

The South Dakota Network, LLC (“SDN”) received the attached dispute notice for SDN access charges for service between June 2007 and April 2009 and for an invoice dated May 2009. Sprint is currently in default or arrears for the April 2009 invoice. Sprint will be liable for late fees for failure to pay invoices in a timely manner as specified in the tariff.

SDN wishes to inform Sprint of the following matters:

1. All charges to Sprint were for traffic subject to terms, conditions and rates as required by SDN’s tariffs for central equal access (“CEA”) tandem traffic approved by the requisite regulatory authority. The tariffs have been in effect for many years without material change. All charges are applied to actual measured usage by jurisdiction. All billed traffic is terminated to SDN by Sprint using Feature Group D access services ordered by Sprint.
2. SDN is not aware of the specific nature of any terminating traffic sent to SDN by Sprint or that it is artificially stimulated, chat line, free teleconferencing or revenue sharing usage. Sprint does not identify any traffic by specific usage nor has Sprint ever previously communicated to SDN that it considers such traffic to not qualify for rating and charging under applicable access tariff provisions or to take any action based on any Sprint identified traffic not covered by the applicable tariff. Sprint provides no legal basis for asserting such a position or any decision of competent authority to support any such assertion.
3. From the nature of the alleged traffic and Sprint’s inability or unwillingness to identify or otherwise segregate such traffic, Sprint has no basis upon which to determine what part of a particular billing, if any, is attributable to the stimulated usage Sprint identifies. Any attempt to

adjust any prior bill, or to dispute current bills is without factual basis or support. Additionally, the Federal Communications Commission ("FCC") has not condoned traffic blocking or a deliberate failure to pay tariffed charges as appropriate self-help remedies available to either SDN or Sprint in these situations.

Accordingly, SDN anticipates that Sprint will continue to pay all bills based on current reasonable and approved tariff rates for any traffic Sprint elects to terminate through the SDN CEA tandem.

Sincerely,

/s/

William P. Heaston
Attorney for SDN