

**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	DOCKET TC09-098
IN THE MATTER OF THE THIRD PARTY COMPLAINT OF SPRINT COMMUNICATIONS COMPANY LP AGAINST SPLITROCK PROPERTIES, INC., NORTHERN VALLEY COMMUNICATIONS, L.L.C., SANCOM, INC., AND CAPITAL TELEPHONE COMPANY	<b>NORTHERN VALLEY COMMUNICATIONS, L.L.C. AND SANCOM, INC.'S REPLY SUPPORTING MOTION FOR THE ADOPTION OF A PROCEDURAL SCHEDULE</b>

Northern Valley Communications, L.L.C. ("Northern Valley") and Sancom, Inc. ("Sancom"), by counsel, state as follows as and for their Reply Supporting Motion for the Adoption of a Procedural Schedule:

Sprint's opposition to Northern Valley and Sancom's Motion for the Adoption of a Procedural Schedule argues that the federal court did not refer issues to the South Dakota Public Utilities Commission ("PUC") and that the PUC should not decide whether Northern Valley and Sancom are entitled to compensation outside their tariffs, if their tariffs do not apply to the traffic at issue, nor decide a reasonable rate for that compensation. Sprint agrees with the dates proposed by Northern Valley and Sancom, but argues against the scope of the proceeding as described in Northern Valley and Sancom's procedural schedule. *See* Sprint Opp. at 1.

Sprint's tactics at this point are clear: after agreeing that the same issues should be referred to the PUC for intrastate traffic that were referred to the Federal Communications Commission ("FCC") by the federal court, Sprint now seeks to prevent Northern Valley and Sancom from addressing those very issues at the PUC. The PUC should reject Sprint's proposed

procedural schedule and adopt Northern Valley and Sancom's proposed procedural schedule, including that the scope of the issues that must be addressed includes the three referred issues.

**I. THREE ISSUES HAVE BEEN REFERRED TO THE PUC FOR GUIDANCE AT THE REQUEST OF BOTH PARTIES**

Northern Valley and Sancom have repeatedly demonstrated that the federal court undoubtedly referred the three issues to the PUC for guidance. *See* Northern Valley's Mot. to Compel (filed May 27, 2011); Reply Supp. Mot. to Compel (filed July 8, 2011); Joint Opp. to Sprint Am. Mot. to Dismiss (filed July 15, 2011). Sprint specifically intended that the PUC resolve them when it joined Northern Valley and Sancom to ask the federal court to refer the issues or stay the case until the PUC resolves the issues. As shown in the email correspondence between Sprint's counsel and Northern Valley's counsel, Sprint expressly agreed to refer the issues and even drafted the first version of the referral request to the federal court. *See* Reply Supporting Motion to Compel, Ex. A (filed July 8, 2011). Sprint's draft included language such as: "Sprint, too, agrees that if, as this court found, FCC expertise is important in deciding specified questions for interstate traffic, SD PUC expertise is equally useful in deciding *these questions* for intrastate traffic." *Id.*, Ex. A, Draft Joint Mot. at 3 (emphasis added).

Furthermore, Sprint's repeated arguments about whether the PUC can resolve *claims* are futile when the PUC is being asked to address *issues* that are well within its expertise and experience. *See* Joint Opp. to Sprint Am. Mot. to Dismiss (filed July 15, 2011). There is no risk that the PUC will act outside its jurisdiction in resolving issues related to intrastate traffic, including tariffs and rates. *Id.* Northern Valley and Sancom's procedural schedule properly reflects the scope of the proceeding, which necessarily includes the three referred issues. The PUC should adopt Northern Valley and Sancom's procedural schedule.

## **II. NORTHERN VALLEY AND SANCOM'S PROCEDURAL SCHEDULE DOES NOT CREATE A RULEMAKING**

Sprint's remaining arguments against Northern Valley and Sancom's proposed procedural schedule are really just substantive arguments about how the three referred issues should be resolved. Sprint argues that the PUC should not consider the third issue, which would evaluate what a reasonable rate of compensation would be for Northern Valley and Sancom if the tariff does not apply. Sprint Opp. at 7. Sprint also argues that Northern Valley and Sancom should not be able to obtain compensation outside of their tariffs because of the filed rate doctrine in South Dakota, which is an argument on the second issue, whether Northern Valley and Sancom can obtain compensation outside of the tariff. *Id.* at 8. The PUC should not evaluate these arguments in the context of deciding whether to adopt Northern Valley and Sancom's proposed procedural schedule because Sprint can press all of these substantive arguments on the referred issues within the context of Northern Valley and Sancom's proposed procedural schedule. The PUC should instead adopt Northern Valley and Sancom's proposed procedural schedule, and allow the parties to make substantive arguments with the benefit of discovery on the three referred issues.

Additionally, Northern Valley and Sancom are not requesting that a rulemaking be instituted, but that the PUC provide guidance on tariffs and rates, issues that are undoubtedly within the expertise of the PUC. If the PUC believes it must institute a rulemaking docket on the referred issues, it should dismiss Northern Valley and Sancom from this action and initiate a rulemaking proceeding that addresses the three referred issues. The PUC should not condone Sprint's attempts to prevent Northern Valley and Sancom from resolving the three referred issues at all and only allowing Sprint to pursue its arguments. Such a result would prejudice Northern Valley and Sancom, and the federal court would not receive the guidance it is expecting on the three referred issues.

In sum, Northern Valley and Sancom's proposed procedural schedule has dates to which Sprint already agrees, and appropriately reflects the scope of the issues that must be addressed. At Sprint *and* Northern Valley and Sancom's request, a federal court referred issues to the PUC for guidance. Northern Valley and Sancom's proposed procedural schedule appropriately reflects that referral and should be adopted by the PUC.

Dated: July 14, 2011

*James M. Cremer*

James M. Cremer  
BANTZ, GOSCH & CREMER, L.L.C.  
305 Sixth Avenue SE; P.O. Box 970  
Aberdeen, SD 57402-0970  
605-225-2232; 605-225-2497 (fax)  
jcremer@bantzlaw.com

Ross A. Buntrock (*pro hac vice*)  
G. David Carter (*pro hac vice*)  
ARENT FOX LLP  
1050 Connecticut Avenue NW  
Washington, DC 20036-5339  
202-775-5734; 202-775-6395 (fax)  
buntrock.ross@arentfox.com  
carter.david@arentfox.com

*Counsel for Northern Valley Communications, L.L.C.*

*Jeffrey D. Larson*

Jeffrey D. Larson  
LARSON & NIPE  
P.O. Box 277  
Woonsocket, SD 57385-0277  
605-796-4245; 605-796-4227 (fax)  
jdlarson@santel.net

Ross A. Buntrock (*pro hac vice*)  
G. David Carter (*pro hac vice*)  
ARENT FOX LLP  
1050 Connecticut Avenue NW  
Washington, DC 20036-5339  
202-775-5734; 202-775-6395 (fax)  
buntrock.ross@arentfox.com  
carter.david@arentfox.com

*Counsel for Sancom, Inc.*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 14th day of July 2011 upon the following:

Ms. Patricia Van Gerpen  
Executive Director  
SD Public Utilities Commission  
500 East Capitol Avenue, 1st Floor  
Pierre, SD 57501-5070  
605-773-3201; 866-757-6031 (fax)  
patty.vangerpen@state.sd.us

Ms. Bobbi Bourk  
Staff Analyst  
SD Public Utilities Commission  
500 East Capitol Avenue, 1st Floor  
Pierre, SD 57501-5070  
605-773-3201; 866-757-6031 (fax)  
bobbi.bourk@state.sd.us

Ms. Margo D. Northrup  
Attorney at Law  
Riter Rogers Wattier & Northrup LLP  
P.O. Box 280  
Pierre, SD 57501-0280  
605-224-5825; 605-224-7102 (fax)  
m.northrup@riterlaw.com

Mr. Talbot Wiczorek  
Attorney at Law  
Gunderson Palmer Nelson & Ashmore LLP  
P.O. Box 8045  
Rapid City, SD 57709-8045  
605-342-1078; 605-342-0480 (fax)  
tjw@gpnlaw.com

Ms. Meredith A. Moore  
Attorney at Law  
Cutler & Donahoe LLP  
100 North Phillips Avenue, 9th Floor  
Sioux Falls, SD 57104-6725  
605-335-4950; 605-335-4961 (fax)  
meredithm@cutlerlawfirm.com

Ms. Karen E. Cremer  
Staff Attorney  
SD Public Utilities Commission  
500 East Capitol Avenue, 1st Floor  
Pierre, SD 57501-5070  
605-773-3201; 866-757-6031 (fax)  
karen.cremer@state.sd.us

Ms. Darla Pollman Rogers  
Attorney at Law  
Riter Rogers Wattier & Northrup LLP  
P.O. Box 280  
Pierre, SD 57501-0280  
605-224-5825; 605-224-7102 (fax)  
dprogers@riterlaw.com

Mr. William P. Heaston  
Director, Business Development  
SDN Communications  
2900 W. 10th Street  
Sioux Falls, SD 57104-2543  
605-978-3596  
bill.heaston@sdncommunications.com

Mr. Philip R. Schenkenberg  
Briggs and Morgan, P.A.  
80 South Eighth Street  
2200 IDS Center  
Minneapolis, MN 55402  
612-977-8400; 612-977-8650 (fax)  
pschenkenberg@briggs.com

James M. Cremer

BANTZ, GOSCH & CREMER, L.L.C.  
Attorneys for Northern Valley Communications, L.L.C.  
305 Sixth Avenue SE; P.O. Box 970  
Aberdeen, SD 57402-0970  
605-225-2232; 605-225-2497 (fax)  
jcremer@bantzlaw.com