

## **Exhibit B – Sprint’s Proposed Procedural Schedule**

### **Summary of Procedural History**

1. This case was initiated on October 29, 2009, when South Dakota Network, LLC ("SDN") filed its Complaint against Sprint Communications Company L.P. ("Sprint"). The minutes at issue in the Complaint are intrastate minutes delivered from Sprint to SDN's centralized equal access tandem switch, for delivery to certain entities utilizing telephone numbers assigned by Splitrock Properties, Inc. ("Splitrock"), Northern Valley Communications, L.L.C. ("Northern Valley"), Sancom, Inc. ("Sancom"), and Capital Telephone Company ("Capital") (hereinafter sometimes referred to as "Third Party Defendants"). Sprint had disputed SDN's access charge bills for that traffic, claiming that the minutes were not subject to tariffed centralized equal access charges. At the time the Complaint was filed Sprint was in litigation with Splitrock,<sup>1</sup> Northern Valley<sup>2</sup> and Sancom,<sup>3</sup> in federal district court in South Dakota regarding whether such minutes were subject to tariffed terminating access charges (hereinafter "The Federal Actions").

2. On November 23, 2009, Sprint moved to dismiss SDN's Count III, Answered Counts I and II, and asserted a Counterclaim. Sprint also filed Third Party Complaints against Splitrock, Northern Valley, Sancom and Capital. Sprint demanded declaratory relief against all third party defendants, and asserted that all third party defendants were obligated to reimburse Sprint for any damages it owed to SDN. Sprint demanded monetary relief only as to Third Party Defendant Capital.

3. Northern Valley and Sancom answered Sprint's Counterclaim on January 22, 2010, and both asserted cross-claims against Sprint for monetary damages. Splitrock

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<sup>1</sup> *Splitrock Properties Inc. v. Sprint Communications Company L.P.*, Case No. CIV 09-4075 (D.S.D.).

<sup>2</sup> *Northern Valley Communications vs. Sprint Communications Company L.P.*, Case No. CIV 08-1003 (D.S.D.).

<sup>3</sup> *Sancom Inc. v. Sprint Communications Company L.P.*, Case No. CIV 07-4107 (D.S.D.).

answered Sprint's Counterclaim on January 22, 2010, but did not assert a cross-claim. Capital did not answer, remains in default and, on information and belief, is no longer in business.

4. On February 11, 2010, Sprint moved to dismiss the Northern Valley and Sancom claims for damages on the basis that such claims were barred by the election of remedies provision in SDCL § 49-13-1.1, as they had already sought monetary damages in Federal Court. Northern Valley and Sancom opposed the motion, and in so doing questioned the Commission's authority to resolve Sprint's request for declaratory relief, also relying on SDCL § 49-13-1.1.

5. Before briefing was completed on Sprint's motion to dismiss, it became clear the Federal District Court was likely to stay those cases and refer them to the Federal Communications Commission ("FCC") and/or the Commission. The parties agreed they would await further direction before proceeding on Sprint's motion to dismiss.

6. On March 15, 2010, the Federal District Court stayed the *Sancom v. Sprint* case, and referred issues to the FCC. On May 26, 2010, the Court clarified its order by extending its stay to last through the completion of this proceeding. There was no referral to this Commission, but the stay order reflects the Court's understanding that issues of intrastate traffic will be decided by the Commission in this proceeding. These orders are attached as Exhibits A and B hereto (hereinafter "Referral Orders").

7. On March 15, 2010, the Federal District Court stayed *Northern Valley v. Sprint* case, and referred issues to the FCC. On May 26, 2010, the Court clarified its order by extending its stay to last through the completion of this proceeding. There was no referral to this Commission, but the stay order reflects the Court's understanding that issues of intrastate traffic were being decided by the Commission in this proceeding. These orders are attached as Exhibits C and D hereto (hereinafter "Referral Orders").

8. On March 30, 2010, the Federal District Court stayed the *Splitrock v. Sprint* case, and referred issues to the FCC. This order is attached as Exhibit E hereto (hereinafter "Referral Orders").

9. On June 7, 2010, SDN filed its Amended Complaint, which included updated dispute totals for the Third Party Defendants and new dispute amounts for calls to entities utilizing numbers assigned by Native American Telecom, LLC ("NAT"). On September 1, 2010, SDN filed its Motion for Summary Judgment.

10. Sprint filed Amended Motions To Dismiss the Cross-claims of Northern Valley and Sancom on June 14, 2011. In addition to asserting that Northern Valley's and Sancom's claims are barred by the election of remedies provision in SDCL 49-13-14.1, Sprint also sought to dismiss Counts III (Unjust Enrichment) and Count II (Implied Contract) because they seek relief the Commission is without jurisdiction to award.

11. Since the federal court cases were stayed and referred in March 2010, all parties have been engaged in various discussions regarding 1) the procedure for undertaking discovery and presenting issues for disposition in this docket, and 2) potential negotiated resolution of certain issues raised in the pleadings. In addition, Sprint, Northern Valley, Sancom and Splitrock have been engaged in further discussions regarding 1) the procedure for undertaking discovery and presenting issues for disposition at the FCC, and 2) coordinating discovery that will occur in other related dockets.

12. Since December 2010, counsel has exchanged draft procedural schedules, but have been unable to reach an agreement on a final schedule.

**Issues to be Litigated and Manner of Proceeding**

13. As part of this docket, the Commission will address the following issues:
  - A. As between SDN and Sprint – the issues raised in the pleadings filed between them, including the issues currently before the Commission pursuant to SDN's Summary Judgment Motion filed September 1, 2010, with respect to intrastate traffic billed on or before August 1, 2011.
  - B. As between Sprint and the Third Party Defendants – the issues raised in Sprint's third party complaints (and the answers thereto) with respect to intrastate traffic billed by SDN on or before August 1, 2011. This necessarily includes intrastate issues within the Commission's jurisdiction and authority that could be of use to the Federal District Court in accordance with Exhibits A through E (the Referral Orders). In addition, while the Court did not modify its Splitrock/Sprint referral order to extend the stay to last through the completion of this proceeding, the Commission will proceed as if there had been an order in that case comparable to Exhibits B and D.
  - C. The parties will not proceed to hearing on the Cross-claims filed by Northern Valley and Sancom. Those Cross-claims are barred by SDCL § 49-13-1.1, and the Commission lacks jurisdiction to award relief on theories of Unjust Enrichment and Implied Contract.

### **Discovery Generally**

14. SDN, Sprint and Third Party Defendants have agreed it is in their interest to coordinate and consolidate discovery (including party and non-party depositions) in this case with discovery that is anticipated in cases venued elsewhere. For example, the parties agreed it is impractical to separate discovery for the claims, defenses and damages relating to the parties' intrastate dispute from the claims, defenses and damages relating to the parties' interstate dispute. Accordingly, to the extent that a party is providing documents or conducting depositions, it is the intent of the parties to seek and make available discovery that would be relevant to both interstate and intrastate matters.

15. Notwithstanding the above, Sprint and certain Third Party Defendants disagree about the scope of discovery that is relevant to the issues referred to the Commission and the Federal Communications Commission. The parties will articulate their respective positions in (or in response to) appropriate motion papers.

16. Discovery may be served by any party immediately (and, indeed, many parties have already served discovery requests and responses), but the parties agreed to take efforts to avoid lodging repetitive discovery requests. Responses to discovery requests are due 20 days after service. Each party will have the ongoing obligation to update and supplement discovery responses. Within 7 days of receipt of each other's respective discovery responses, or as soon as practicable thereafter, both parties shall make a good faith effort to resolve any issues related to deficient discovery responses. If the parties are unable to resolve any discovery issues that may arise, any Motions(s) to Compel shall be filed with the Commission.

17. Discovery requests and responses shall not be filed with the Commission unless necessary in connection with a motion to compel or if introduced as a hearing exhibit.

18. The parties will coordinate depositions and discovery with those occurring in other related cases, to the full extent possible, so that this case proceeds efficiently.

19. Northern Valley has already provided to Sprint discovery responses, documents and deposition transcripts it previously provided to Qwest. In light of discovery disputes that occurred between Northern Valley and Sprint before the Federal District Court's stay, Sprint has not conceded that the information it has already received, combined with the information it will receive in accordance with this paragraph, will be full and complete. Accordingly, Sprint has propounded additional discovery requests for Sprint-specific information, to which Northern Valley is responding.

20. Similarly, Sancom has already provided to Sprint discovery responses, documents and deposition transcripts it previously provided to Qwest, to the extent that they have not already been provided. Sprint may utilize those materials, and any other materials received directly from Sancom, in its case. Sprint has not conceded that the information it has already received, combined with the information it will receive in accordance with this paragraph, will be full and complete, and Sprint has reserved its right to seek additional, non-duplicative discovery.

21. Sancom and Northern Valley have served discovery requests upon Sprint. Sprint's responses are the subject of an initial motion to compel that was filed by Northern Valley on May 27, 2011.

22. Northern Valley and Sancom understand that Splitrock previously provided to Sprint those discovery responses and documents it produced in connection with the matters styled as *Splitrock Properties, Inc. v. Sprint Communications Company, L.P.*, Civ. No. 09-4075 (D.S.D.) and *Splitrock Properties, Inc. v. Qwest Communications Corporation*, Civ. No. 08-

04172 (D.S.D.). Sprint may utilize those materials, and any other materials received directly from Splitrock in this case. Sprint has propounded additional discovery in connection with this matter and Splitrock intends to do the same in conformance with this schedule.

**Proposed Procedural Schedule**

23. The Commission adopts the following procedural schedule:
  - A. SDN's Motion for Summary Judgment will be heard at the Commission's September 13, 2011, meeting. SDN may file updated motion papers (including supporting Briefs) no fewer than 30 days before the hearing. Sprint's response will be due 14 days before the hearing, and SDN's reply will be due three days before the hearing. On this Motion, the Commission will make no decision on the issues between Sprint and Third-Party Defendants
  - B. All written discovery requests (other than requests directed at pre-filed testimony) shall be served no later than **September 30, 2011**. Written discovery requests directed at statements made in pre-filed testimony may be served within 14 days after the testimony is filed.
  - C. All fact depositions shall occur no later than **October 28, 2011**.
  - D. On or before **November 21, 2011**, SDN shall serve and file direct testimony, including exhibits, with respect to issues not resolved on its Motion for Summary Judgment.
  - E. On or before **December 30, 2011**, Sprint may serve and file reply testimony to SDN's testimony, and direct testimony with respect to its third party complaints.

- F. On or before **February 3, 2012**, any third party defendant(s) shall serve and file reply testimony.
- G. On or before **March 12, 2012**, SDN and Sprint may file rebuttal testimony, which shall be limited to new matters raised in reply testimony.
- H. The hearing shall be set for 5 days beginning after **April 23, 2012**, or as the Commission's calendar allows. No witness shall be allowed to testify at the hearing unless that witness has pre-filed testimony pursuant to this schedule.
- I. A post hearing briefing schedule will be set at the hearing.

24. Service in this case shall be accomplished by email, which is effective upon receipt by the party served.

25. Documents produced in response to discovery requests shall be produced in searchable .pdf or .tif format or, in the case of worksheets, spreadsheets or cost calculations, in native, unprotected electronic format.