

**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 NUMBER TC 09-098

)
IN THE MATTER OF THE THIRD)
PARTY COMPLAINT OF SPRINT)
COMMUNICATIONS COMPANY LP)
AGAINST SPLITROCK PROPERTIES,)
INC., NORTHERN VALLEY)
COMMUNICATIONS, INC.,)
NORTHERN VALLEY, INC., AND)
CAPITAL TELEPHONE)
COMPANY)

**SANCOM, INC.'S JOINDER IN
NORTHERN VALLEY COMMUNICATIONS, LLC'S
MOTION TO COMPEL**

Third-Party Defendant Sancom, Inc. ("Sancom"), by and through counsel, and pursuant to S.D. Admin. R. 20:10:01:01.02 and S.D.C.L. § 15-6-37(a), hereby submits this joinder in the motion to compel against Sprint Communications Company, LP ("Sprint") filed by Northern Valley Communications, LLC, which seeks to resolve a threshold issue of relevance. *See In the Matter of Complaint of South Dakota Network, LLC against Sprint Communications Company, LP*, Docket Number TC 09-098, Northern Valley Communication, LLC's Motion to Compel (May 27, 2011).

As with Northern Valley, Sprint has refused to provide relevant discovery sought by Sancom. Sprint has objected to responding to discovery requests "to the extent they seek discovery of information related to Sancom's unjust enrichment claims in this case...." *See Sprint Communications Company, LP's Answers to Sancom, Inc.'s First Interrogatories, General*

Objection 2 and 3 (May 23, 2011) (“Sprint Interrogatory Responses”), attached hereto as Exhibit A; Sprint Communications Company, LP’s Responses to Sancom, Inc.’s First Document Requests General Objection 2 and 3 (May 23, 2011) (“Sprint Document Responses”), attached hereto as Exhibit B. Sprint’s general objection, which is then used to refuse to provide virtually all of the discovery requested by Sancom, is wholly unjustified. The information sought by Sancom is relevant to issues that are before the South Dakota Public Utilities Commission (“PUC”) in this proceeding as the result of a primary jurisdiction referral in a federal case between Sancom and Sprint. *See Sancom, Inc. v. Sprint Commc’ns Co., LP*, No. 07-4107-KES, 2010 WL 936718, Order Staying Case and Referring Several Issues to the Federal Communications Commission (D.S.D. Mar. 15, 2010); *Sancom, Inc. v. Sprint Commc’ns Co., LP*, No. 07-4107-KES , Order, ECF No. 114 (May 26, 2010) (staying the case until “a final order in the pending SD PUC proceeding in *SD Network, LLC v. Sprint Communications Co.*, Docket TC 09-098 (S.D. Pub Utils. Bd.) and a decision on the disputed issues by the FCC pursuant to the referral described in Docket 112”), attached hereto as Exhibit C.

For the reasons set forth in the memorandum accompanying Northern Valley’s motion to compel, Sancom joins Northern Valley in requesting that the PUC resolve this threshold issue of relevancy by finding that Sancom and Northern Valley are entitled to discovery relating to the alternative theory of recovery, unjust enrichment, which would be applicable if the Commission determines that their respective intrastate access tariffs do not apply to the traffic that Sprint’s customer terminated to conference call providers served by Sancom and Northern Valley. This alternative claim is intended to ensure that these LECs receive reasonable compensation for the work that they have performed to Sprint’s great benefit (*i.e.*, the ability to bill and collect

substantial sums of money from its customers for each of the calls in dispute, even though it refuses to pay *any* switched access charges for these very same calls).

As Northern Valley has explained, even though a “claim” for unjust enrichment is not before the PUC as a technical matter, “issues” regarding Sancom’s unjust enrichment claim are before the PUC because the United States District Court for the District of South Dakota has referred those to the PUC, just as the Court did for interstate issues to the Federal Communications Commission, at the request of Sancom. Specifically, the Court’s FCC referral order referred the following issues (which are also embraced by the Court’s second order clarifying that it will stay the case until it also receives guidance from this Commission):

(1) Whether, under the facts of the present dispute between Sancom and Sprint, Sancom is entitled to collect interstate switched access charges it has billed to Sprint pursuant to Sancom’s interstate access tariff for calls to numbers assigned to free calling providers.

(2) In the event that the services provided by Sancom to Sprint, by which calls placed by Sprint’s customers are delivered to free calling providers served by Sancom, do not qualify as switched access service under Sancom’s applicable interstate access tariff, determination of the proper classification of these services, whether such services are subject to federal tariffing requirements, and whether Sancom is entitled to obtain compensation for these services.

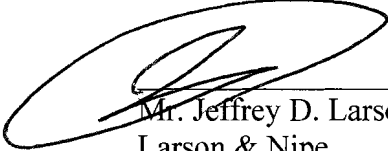
(3) In the event that the services provided by Sancom to Sprint do not qualify as switched access service under Sancom’s applicable interstate access tariff, but Sancom is otherwise entitled to compensation for these services, determination of a reasonable rate for these services.

See 2010 WL 936718, at *12.

Thus, Sprint is simply resisting all discovery based on semantics, some unfounded distinction between “claims” and “issues,” or an invented distinction between what is relevant to this Commission, as compared to what may be relevant to the Federal Communications

Commission's adjudication of the interstate access issues. The federal court referred issues to the PUC for guidance, and Sancom is entitled to discovery related to those issues, even though (or precisely because) the guidance the Commission provides may ultimately be used by the court to resolve Sancom's unjust enrichment claim. For this reason, Sancom respectfully requests that the Commission strike Sprint's baseless relevancy objections and order Sprint to revise and supplement its discovery responses.

Dated: June 7, 2011



Mr. Jeffrey D. Larson
Larson & Nipe
P.O. Box 277
Woonsocket, SD 57385
jdlarson@santel.net

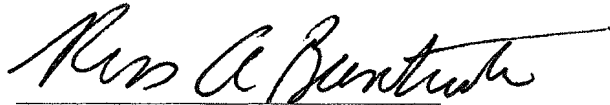
Ross A. Buntrock (*pro hac vice*)
G. David Carter (*pro hac vice*)
Arent Fox LLP
1050 Connecticut Ave, NW
Washington, DC 20036
202-775-5734 / 202-857-6395 (fax)
buntrock.ross@arentfox.com
carter.david@arentfox.com

Counsel for Sancom, Inc.

CERTIFICATION

On behalf of Sancom, Inc., and pursuant to S.D.C.L. § 15-6-37(a), I certify under penalty of perjury that I have in good faith conferred with counsel for Sprint Communications Company, LP, the party failing to make the discovery requested in Sancom's motion to compel, in an effort to secure the information and materials without P.U.C. action. This consultation occurred as part of my representation of Northern Valley Communications, LLC, the party filing the initial motion to compel.

Dated: June 7, 2011



Ross A. Buntrock
Counsel for Sancom, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 7th day of June 2011, a copy of SANCOM, INC'S JOINDER IN NORTHERN VALLEY COMMUNICATIONS, LLC'S MOTION TO COMPEL was served via email and U.S. Mail to:

Ms. Karen Cremer
Staff Attorney
South Dakota Public Utilities Commission 500
East Capitol
Pierre, SD 57501
Kara.semmler@state.sd.us

James M. Cremer
305 Sixth Avenue, SE
Aberdeen, SD 57402-0970
(605) 225-2232
(605) 225-2497 Fax
Jcremer@bantzlaw.com

Ms. Darla Pollman Rogers
Riter, Rogers, Wattier & Brown LLP
P O Box 280
Pierre, SD 57501-0280
dprogers@riterlaw.com

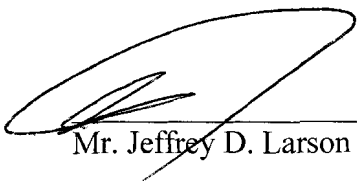
Ms. Meredith Moore
Cutler & Donahoe, LLP
100 N. Phillips Avenue, 9th Floor
Sioux Falls, SD 57104-6725
meredithm@cutlerlawfirm.com

Ms. Margo D. Northrup
Riter, Rogers, Wattier & Brown LLP
P O Box 280
Pierre, SD 57501-0280
m.northrup@riterlaw.com

Phil Schenkenberg
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
pschenkenberg@briggs.com

Ms. Bobbi Bourk
Staff Analyst
South Dakota Public Utilities Commission 500
East Capital
Pierre, SD 57501
Bobbi.bourk@state.sd.us

Talbot J. Wiczorek
Gunderson, Palmer, Nelson & Ashmore, LLP
440 Mount Rushmore Rd.
Third Floor
Rapid City, SD 57701
tjw@gpnalaw.com


Mr. Jeffrey D. Larson