

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

**NORTHERN VALLEY
COMMUNICATIONS, L.L.C.'S
AMENDED COUNTERCLAIMS
AGAINST SPRINT
COMMUNICATIONS COMPANY, LP**

Northern Valley Communications, L.L.C. ("Northern Valley"), for its amended counterclaims against Sprint Communications Company L.P. ("Sprint"), states and alleges as follows:

NATURE OF THE CASE

1. Northern Valley brings these counterclaims against Sprint for a declaratory judgment regarding Sprint's refusal to pay Northern Valley amounts due for originating and terminating telephone access services to Northern Valley's traditional residential and business customers as well its business customers that provide conference-calling services. Northern Valley asks that the Commission declare that (1) Sprint has improperly withheld undisputed amounts that are due and owing for intrastate access services associated with traditional residential and business customers and that Sprint's AP Debit Balance theory violates Northern Valley's tariff and South Dakota law; (2) Northern Valley's intrastate access tariff applies to the traffic terminating to conference-call providers served by Northern Valley; or (3) in the event the Commission determines Northern Valley's intrastate tariff does not apply for any reason,

that Northern Valley is nevertheless entitled to reasonable compensation for the services it has provided to Sprint in terminating Sprint's intrastate long-distance traffic; and Northern Valley further requests that the Commission declare a reasonable rate for the services provided to Sprint, which may include, but is not necessarily limited to, the rate contained in Northern Valley's intrastate access tariff.

THE PARTIES

2. Northern Valley Communications, L.L.C., is a limited liability company organized and existing under the laws of South Dakota, with its principal place of business in Aberdeen, South Dakota.

3. Sprint Communications Company L.P. is a limited partnership with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251, and is authorized to conduct business in the State of South Dakota.

JURISDICTION AND VENUE

4. The Commission has jurisdiction over this counterclaim pursuant to SDCL 15-6-13 (SD Rules of Civil Procedure for Counterclaims), SDCL 15-6-57 (SD Rules of Civil Procedure for Declaratory Judgments), SDCL 49-13-1(Complaints before the Commission), SDCL 49-13-13 (Commission authority to "prescribe the just and reasonable charge"), SDCL 1-26-15 (Agency authority to issue declaratory rulings), ARSD 20:10:01:01.02 (Commission use of SD Rules of Civil Procedure), and ARSD 20:10:01:34 (Commission rule for petitions for declaratory ruling).

FACTUAL ALLEGATIONS

5. Northern Valley is a competitive local exchange carrier ("CLEC") serving business and residential customers in Aberdeen, Redfield and surrounding areas of South Dakota.

6. Sprint is an interexchange ("IXC," or "long-distance carrier") carrier that provides long-distance service.

7. As an IXC, Sprint provides long-distance phone service to its customers throughout the country. To do so, Sprint uses, *inter alia*, phone lines owned by LECs.

8. When a Sprint long-distance customer places a long-distance call to South Dakota, Sprint typically must use the facilities of a LEC in South Dakota to complete the call.

9. IXCs like Sprint pay "originating" Switched Access Charges to the LECs that serve customers who initiate calls within their local calling area and "terminating" Switched Access Charges to the LECs that serve customers who receive long-distance calls within the LEC's local calling area.

10. The rate for the Switched Access Charge is established in tariffs that the LEC has filed with the FCC (for interstate long-distance calls) and state public utilities commissions (for intrastate long-distance calls).

11. The rates for Northern Valley's Switched Access Service are prescribed in tariffs filed with the FCC (for interstate long-distance calls) and South Dakota Public Utilities Commission (for intrastate long-distance calls).

12. Sprint utilized, and continues to utilize, the originating and terminating access services provided by Northern Valley; without Northern Valley's services, Sprint's customers' call could not be completed.

SPRINT'S WITHHOLDING OF UNDISPUTED CHARGES

13. Northern Valley has billed Defendant Sprint for intrastate Switched Access Service charges in accordance with its intrastate tariff. For many years, however, Sprint refused to pay Northern Valley's invoices with regard to any traffic, including, but not limited to, traffic terminating to conference-call providers. Sprint has withheld hundreds of thousands of dollars in intrastate access charges for traffic that has, without dispute, been terminated to Northern Valley's traditional residential and business customers.

14. Even though Sprint has never disputed this traffic, it claims that it is entitled to withhold those funds as an offset against amounts it previously paid for traffic terminating to conference call providers (the so-called "AP Debit Balance").

15. Even though this Commission has rejected Sprint's AP Debit Balance theory with regard to Sprint's withholding from South Dakota Network, Sprint has refused to release those improperly withheld funds from Northern Valley. Sprint's refusal has necessitated this amendment to Northern Valley's counterclaims and, in part, the simultaneously-filed partial motion for summary judgment.

SPRINT'S WITHHOLDING FOR THE CONFERENCE CALLING TRAFFIC

16. Sprint's excuse for not paying for the conference call traffic hinges on Sprint's claim that the conference-calling companies are not "customers" or "end users" under Northern Valley's intrastate tariff and that, as a result, Northern Valley is not entitled to payment of access charges.

17. Sprint's analysis ignores South Dakota law, which governs the relationship between a South Dakota LEC and its end user customer. In South Dakota, the local exchange services of small independent telephone companies, such as Northern Valley, have been

deregulated and these carriers are not required to file a tariff for local exchange service. *See* SDCL § 49-31-5.1 and SDCL § 49-31-12.2.

18. Indeed, in South Dakota, "no rate of return or price regulation" applies to fully competitive services. *See* SDCL § 49-31-4. Since 2003, local exchange services have been deemed to be "fully competitive." *See In the Matter of the Application of Qwest Corporation to Reclassify Local Exchange Services as Fully Competitive*, TC 03-357, Order Reclassifying Qwest's Local Exchange Services as Fully Competitive; Order Approving Settlement Agreement; Notice of Entry (October 29, 2003).

19. Furthermore, state law clearly permits local exchange carriers, such as Northern Valley, to offer whatever terms of service it chooses to its local customers, especially higher volume customers, including conference-calling providers. It provides:

SDCL § 49-31-84 Telecommunication companies may grant incentives to meet competition.

It is in the public interest and essential that local exchange telecommunication companies over all of South Dakota continue to be viable providers of affordable local exchange services. Local exchange telecommunication companies receive substantial revenue necessary to support the exchange from a minority of their customers. Local exchange telecommunication companies must be allowed to compete to keep their profitable customers in order to maintain the viability of local exchanges. However, customers in rural and high-cost areas shall have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Notwithstanding any other provisions of chapter 49-31, any telecommunication company may grant any discounts, incentives, services, or other business practices necessary to meet competition.

20. Northern Valley, pursuant to SDCL 49-31-84 and the other applicable provisions of state law, has entered into individual contracts with its conference-calling providers that define the terms of local service.

21. Sprint has an unpaid balance for intrastate traffic related to calls that Sprint's customers made to Northern Valley's customers providing conference-calling services. Sprint has also accrued and continues to accrue late fees on the unpaid intrastate balance.

22. Sprint's ability to send calls to and receive calls from the residences and businesses connected to Northern Valley's network is a valuable service that enriches Sprint. Because of Northern Valley's service, Sprint is able to bill its long-distance customers for long-distance services, and receive payment from those customers.

23. Northern Valley has always expected to be compensated for the work it does, which enables Sprint to send and receive these calls. Northern Valley has demonstrated this expectation by, *inter alia*, preparing and sending invoices to Sprint on a monthly basis and by pursuing collection actions in federal court against Sprint.

24. Sprint has always known of Northern Valley's expectation of compensation and has continued to send traffic to Northern Valley's network.

25. Sprint would be unjustly enriched if it were not required to pay Northern Valley for the use of its network.

**COUNT I: DECLARATORY JUDGMENT
SPRINT'S UNLAWFUL WITHHOLDING OF
AMOUNTS DUE FOR TRADITIONAL TRAFFIC**

As and for Count I, Northern Valley requests that the Commission enter a declaratory judgment against Sprint as follows:

1. That the LECA tariff contemplates that IXCs will pay undisputed access charges;

2. That Sprint's AP Debit Balance theory, whereby it offsets amounts due on undisputed charges with amounts previously paid on charges subsequently disputed, is inconsistent with the LECA tariff;

3. That Sprint's withholding of undisputed charges from Northern Valley is inconsistent with Northern Valley's tariff and unlawful; and

4. That Sprint is liable to Northern Valley for all intrastate access charges billed on undisputed residential and business traffic, together with late payment penalties on that traffic.

COUNT II: DECLARATORY JUDGMENT
TARIFF APPLICATION TO CONFERENCE CALL TRAFFIC

As and for Count II, Northern Valley requests that the Commission enter a declaratory judgment against Sprint as follows:

1. That South Dakota law, specifically SDCL §§ 49-31-4, 49-31-5.1, 49-31-12.2 and 49-31-84, permits Northern Valley to enter into individual-case-basis contracts with conference-calling providers and that these contracts, rather than Northern Valley's interstate or intrastate access tariffs, establish an end user relationship with these customers of Northern Valley;

2. That Northern Valley provides tariffed intrastate access services to Sprint and that the rate in Northern Valley's intrastate tariff applies to the intrastate long-distant traffic terminating to Northern Valley's conference-call providers; and

3. That Sprint's actions constitute an unjust and unreasonable practice.

COUNT III - DECLARATORY JUDGMENT
COMPENSATION DUE IF TARIFF DOES NOT APPLY

In the event the Commission determines that the rate in Northern Valley's intrastate tariff does not apply, Northern Valley requests that the Commission enter a declaratory judgment against Sprint as follows:

1. Declare that Northern Valley is nevertheless entitled to reasonable compensation;
2. Declare a reasonable rate for the access services provided by Northern Valley for intrastate long-distance traffic terminating to conference-call providers, which reasonable rate may be Northern Valley's intrastate tariffed access rate; and
3. That Sprint's actions constitute an unjust and unreasonable practice.

PRAYER FOR RELIEF

For the foregoing reasons, Northern Valley requests relief as follows:

1. For a declaratory judgment as set forth in Count I;
2. For a declaratory judgment as set forth in Count II or, in the alternative, Count III hereof;
3. For Northern Valley's costs, disbursements and attorney fees; and
4. Such other and further relief as the Commission deems just and reasonable.

Dated: August 29, 2012.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 29th day of August 2012 upon the following:

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