

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING OF)
SOUTH DAKOTA NETWORK, LLC FOR) TC11-069
AN EXTENSION OF AN EXEMPTION)
FROM DEVELOPING COMPANY)
SPECIFIC COST-BASED SWITCHED)
ACCESS RATES)

PUBLIC VERSION
SPRINT COMMUNICATIONS COMPANY L.P.'S MEMORANDUM
IN SUPPORT OF MOTION TO COMPEL

Sprint Communications Company L.P. (“Sprint”) by and through its attorneys, hereby files its Memorandum in Support of its Motion to Compel. Sprint’s Motion seeks an Order from the Commission requiring that South Dakota Network, LLC (“SDN”) provide complete responses to the Data Requests and Requests for Production of Documents. Sprint’s Motion is properly granted under A.R.S.D. 20:10:01:22.01 and S.D.C.L. § 15-6-37(a), because SDN failed to provide accurate and complete responses to the aforementioned requests.

INTRODUCTION

A. Procedural Background

This matter is before the South Dakota Public Utilities Commission (“Commission”) on the Application for Waiver of Switched Access Cost Study. The Application was filed pursuant to A.R.S.D. 20:10:27:02. That regulation requires carriers to comply with A.R.S.D. Chapters 20:10:27 to 20:10:29. These regulations include the obligation under A.R.S.D. 20:10:27:07 that SDN “file cost data in support of its switched access service tariffs no less than once every three years.” However, a carrier can obtain a waiver of this requirement from the Commission. To grant this waiver, the Commission must find that there is good cause for the carrier’s obligation to be waived. Even so, the Commission can only temporarily waive or suspend this obligation,

see A.R.S.D. 20:10:27:02. Often carriers continually request waivers resulting in no formal cost study being completed for a number of years. When SDN filed and requested a waiver in this case, its last cost study had been conducted in 2001 and filed in 2002. See, SDPUC Docket TC02-091.

Sprint filed for intervention for various reasons including that “[b]ased on the monopolistic position of SDN, Sprint is forced to do business with SDN to deliver calls to various RLECs throughout the state” and, further as a long-distance carrier Sprint is subject to the payment of switched access charges to do business in South Dakota. Sprint additionally noted that while SDN claimed that a preliminary cost analysis conducted shows that higher rates could be justified, See SDN Application, ¶ 3, Sprint believed that a complete cost study may show that SDN’s rates should actually be lower. Sprint’s intervention goes on to state that SDN’s Application as submitted fails to show good cause to grant a wavier.

B. Discovery

When Sprint intervened, after putting together a Protective Order Agreement with SDN, Sprint first requested SDN’s discovery provided to SDPUC staff (Staff) in response to Staff inquiries. A short review of the discovery provided to Staff showed that SDN provided essentially no information that one could use to independently verify SDN’s claims. See Wieczorek Aff. Exhibits 8 and 9, SDN’s Responses to Staff’s Data Requests. Therefore, Sprint prepared a set of interrogatories seeking information one would look to in determining switched access rates. Given the fact that SDN claimed as basis for good cause a preliminary cost study showing that SDN’s rates would be higher and SDN would incur a cost in performing a full cost study, Sprint filed a set of data requests in an attempt to make a determination as to whether SDN’s good cause claims were well founded. Sprint’s data requests sought to obtain

information concerning SDN's services, revenues and costs needed to conduct a preliminary cost analysis so Sprint could verify SDN's findings.

On November 30, 2011, Sprint served upon SDN its First Set of Data Requests and Requests for Production of Documents. The interrogatories were drafted with a desire to obtain the basic information one would look to for even a preliminary analysis of rates. See attached Wieczorek Affidavit (Wieczorek Aff.) as **Exhibit 1**. SDN provided responses to Sprint on January 3, 2012. A review of the responses by Sprint showed the responses to be incomplete and that a number of interrogatories have been simply objected to with no subsequent response being provided. See SDN's Responses to Sprint's First Set of Data Requests, attached to Wieczorek Aff. as **Exhibit 2**.

In an effort to obtain the information necessary to justify SDN's claims that good cause existed without the need of filing a motion to compel, Sprint sent a letter to SDN dated January 24, 2012, setting forth each request Sprint felt was incomplete and seeking clarification or a supplemental response. Sprint representatives also offered to have a conference call to try to further resolve any of these issues. A copy of said letter is attached to Wieczorek Aff. **Exhibit 3**.

On February 17, 2012, counsel for the parties, Talbot J. Wieczorek for Sprint, Darla Rogers, SDN's outside counsel, and Bill Heaston, SDN's in-house counsel, met via a teleconference call. SDN offered to provide a worksheet that derived the numbers and estimates SDN provided to Staff. SDN however conditioned providing the spreadsheet on Sprint agreeing to "Highly Confidential" treatment of the spreadsheet that would prevent Sprint from sharing the spreadsheet with any other party, including the Commission or its Staff.

On February 23, 2012, Ms. Rogers provided Sprint with the proposed Stipulation to Designate Materials as Highly Confidential. While Sprint was reluctant to reach such an

agreement, in an effort to resolve the discovery disputes without having to come to the Commission, on March 8, 2012, Sprint responded to SDN's counsel raising concerns with the "Highly Confidential" treatment of the spreadsheet but in an attempt to move forward Sprint demanded certain revisions to the agreement and provided a revised Stipulation with Sprint's proposed changes. See *Wieczorek Aff.* ¶¶ 6 and 7 and **Exhibits 4 and 5**. SDN accepted these changes and on March 22, Sprint provided SDN with a signed Stipulation to Designate Materials as Highly Confidential. See *Wieczorek Aff.* **Exhibit 5**. The "Highly Confidential" spreadsheet latter followed.

After receiving and reviewing SDN's "Highly Confidential" spreadsheet, it was determined that the conclusory numbers provided no support as to how the numbers were derived and provided no additional information that could lead one to replicate the conclusions or verify that the numbers were accurate. Therefore, on July 24, 2012, Sprint sent a letter to SDN counsel, again requesting SDN to provide information previously requested to avoid filing a Motion to Compel. *Wieczorek Aff.* **Exhibit 6**. **[Begin Confidential]**¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[End Confidential]**

LEGAL ANALYSIS

A. Discovery legal standard and obligations

¹ **[Begin Confidential]** [REDACTED]

[REDACTED] **[End Confidential]**

Public Utilities Commission Administrative Rule 20:10:01:22.01, provides the Commission the authority to compel discovery. It states:

A party may obtain discovery from another party without commission approval. The commission at its discretion, either upon its own motion or for good cause shown by a party to a proceeding, may issue an order to compel discovery. The taking and use of discovery shall be in the same manner as in the circuit courts of this state.

Id. As indicated in this rule, discovery is to be consistent with the pertinent rules of civil procedure. Id.

S.D.C.L. Ch. 15-6, sets forth the applicable manner and scope of discovery. Thereunder, S.D.C.L. § 15-6-26(b), governs the scope of discovery. It states:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The South Dakota Supreme Court has held the discovery rules are to be accorded a “broad and liberal treatment.” Kaarup v. St. Paul Fire and Marine Insurance Co., 436 N.W.2d 17, 21 (S.D. 1989). Under S.D.C.L. § 15-6-26(b), when a party puts an issue or fact in controversy, discovery is broad in obtaining relevant information regarding the subject matter. Id. “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” Id. (citing 8 C. Wright and A. Miller, Federal Practice and

Procedure, § 2001 (1970)). The South Dakota Supreme Court has affirmatively stated that all relevant matters are discoverable unless privileged. Id.; S.D.C.L. § 15-6-26.

Written interrogatories and production of documents are proper methods for a party to obtain relevant information. S.D.C.L. § 15-6-26(a). Under S.D.C.L. § 15-6-26(a), the Court looks to S.D.C.L. § 15-6-33 for the procedures that govern written discovery. South Dakota Codified Law § 15-6-33(a) states, “Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable.”

Moreover, S.D.C.L. § 15-6-37(a), provides a party a right to seek a motion to compel if discovery responses are evasive, incomplete, or if an answer or document inspection is not provided. Sprint respectfully requests the Commission find the same sufficient to satisfy the requisite good cause necessary for an order to compel under A.R.S.D. 20:10:01:22.01.

B. Argument

SDN’s last approved switched access rate occurred in 2002 in Docket TC02-091. See In the Matter of Establishment of Switched Access Rates for South Dakota Network, LLC, TC02-091. Subsequently, in May of 2005 and in April 2008, SDN requested and received a waiver of its obligation to file the cost study.

In May of 2005, SDN applied for the waiver as reflected in Docket TC05-062. In the 2005 docket, SDN stated that the waiver was justified “because (1) producing such a study is costly and consumes a great deal of time and resources; and (2) SDN does not anticipate raising access rates at this time, although preliminary analysis indicates that a cost study would likely support higher rates.” See, SDN’s Application filed In the Matter of the Application of South

Dakota Network, LLC, for a Waiver of a Requirement to file a Switched Access Cost Study, ¶ 3, dated May 13, 2005.

In April of 2008, SDN applied for a waiver of cost study requirements in Docket TC08-037. In that filing, SDN represented that the waiver was appropriate for the following reasons:

- (1) Producing such a study is costly and consumes a great deal of time and resources. SDN does not have the internal experts necessary to determine cost-based intrastate access rates and would have to employ the services of outside consultants. This additional expense would not result in any meaningful benefits to consumers of SDN's services; and
- (2) SDN does not anticipate raising access rates at this time, although preliminary analysis indicates that a cost study would support higher rates."

See Request for Extension of Time of Exemption from Developing Company-Specific Cost-Based Switched Access Rates filed In the Matter of the Request of South Dakota Network, LLC, for Approval of Extension of Time of Its Exemption From Developing Company-Specific Cost-Based Switched Access Rates, ¶ 4, dated April 8, 2008. In the filing for waiver of cost study made in this docket, SDN claims as good cause for the waiver the same reasons as previously given in the prior two filings.

When Sprint served its discovery requests, SDN's general responses to most of Sprint's questions was simply that because SDN was requesting a waiver, it did not have to provide any of the requested information. Yet, Sprint believes that if SDN is going to claim good cause exists because its costs could be higher, then SDN has the obligation to prove its claimed good cause is legitimate. Sprint seeks the basic information that SDN would have needed to compile to perform a proper preliminary analysis that SDN claims to have already performed.

Sprint examines below each data request it is seeking to compel and the responses given. In examining the responses below, Sprint sets forth the Interrogatories and Requests for Production in whole and then SDN's entire responses. Sprint then examines the basis for the

Motion to Compel for each written question. Because of SDN's requirement that the spreadsheet be treated as "Highly Confidential", the specific information contained in the spreadsheet can not be divulged. However, Sprint can discuss the types of information and why the information was wanting. See *Wieczorek Aff. Exhibit 4*, ¶ 4(d).

C. SDN's discovery responses

Interrogatory No. 2. In the Application for Waiver of Switched Access Cost Study ("Application"), paragraph 3(3), you state, "Preliminary analysis indicates that a cost study would support higher rates." Identify the following:

- a) Who performed the preliminary analysis;
- b) List of all materials relied upon for the preliminary analysis;
- c) All conclusions reached in the preliminary analysis; and
- d) All documents produced as part of the preliminary analysis.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is proprietary in nature and cannot be adequately protected by a Protection Order.

RESPONSE: Without waiving said objection, Consortia Consulting prepared the preliminary analysis. See Response to Staff's Data Requests and Response to Staff's Data Requests (Second Set).

As the Interrogatory clearly only seeks identification of information relied upon in the analysis and conclusions reached, the two objections, that the interrogatory is overly broad and unduly burdensome and that it is not reasonably calculated to lead to the discovery of admissible evidence, are unfounded. SDN claims to have prepared the preliminary analysis and is using the preliminary analysis as grounds to avoid undertaking its legal obligation to perform a cost study. Copies of the materials Consortia or SDN reviewed to arrive at the conclusions of the preliminary analysis, the conclusions reached in the preliminary analysis, and any documents produced as part of the preliminary analysis are certainly reasonably calculated to lead to discovery of admissible evidence and in fact, are likely admissible. Further, given that the

preliminary analysis was done for the specific purpose to avoid the cost study obligation, the request for this information can hardly be said to be overly broad and unduly burdensome.

If one looks to the Staff discovery, which SDN claims responds to this Interrogatory, one only sees bare numbers, no supporting documentation, and no analysis on how those numbers were even derived. In essence, SDN says it does not have to provide the support for these numbers because everyone should simply believe its stated conclusions.

The materials relied upon for the preliminary analysis should be easily provided by Consortia Consulting and/or SDN. The conclusions reached can easily be provided by Consortia or SDN and the documents produced as part of the preliminary analysis should be readily available.

SDN also claims the information cannot be adequately protected by the Protective Order SDN agreed to and the South Dakota Public Utilities Commission approved. In this situation, SDN has agreed to a Protective Order. The process of using protective orders has been followed by the Commission for at least the last several years. There is no legal authority supporting a blanket objection that information is too proprietary to be produced in a discovery proceeding.

A claim that information is proprietary is not even a proper objection to discovery. Rather, if SDN believes the information is proprietary and cannot be protected by the existing protective order, it has the right to seek an additional protective order under SDCL 15-6-26(c). SDN has not done so and, therefore, must produce the information.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Interrogatory No. 3. Identify all services SDN provides that are not subject to tariff and, for each such service, identify and explain any preliminary cost analysis performed with respect to each such service, including but not limited to expenses allocated and how the allocation was calculated for each such service.

OBJECTION: SDN objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, many of SDN's services are listed on its website at www.sdncommunications.com.

This interrogatory seeks information explaining how a preliminary cost analysis was performed with respect to services that are non-tariffed and how expenses were allocated. This is basic information needed in determining how costs are allocated by a company and what tariff costs are appropriate. SDN's pleadings allege that no meaningful benefit can be derived by the consumers of SDN's services by a cost study. To reach this conclusion, there must be some basic review of non-tariffed services and allocation of costs. If SDN performed any of these functions, the information is relevant as to whether a cost study may result in a benefit to SDN consumers.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

Interrogatory No. 4. Identify the number of minutes of voice traffic SDN’s network carried that were charged under a transiting agreement for each year from 2005 through 2011.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

The number of minutes of traffic delivered by SDN under transiting agreements is relevant to show whether there has been growth in this market. On information and belief SDN has greatly increased its volume of traffic under transiting agreements over the last several years and the growth in those minutes is relevant when considering the allocation of costs.

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

Interrogatory No. 5. In the Application, paragraph 3(1), you state, “SDN does not have the internal experts necessary to determine cost-based intrastate access rates and would have to employ the services of outside consultants.” Identify how SDN made a determination that external experts would be necessary to determine cost-based intrastate access rates, what SDN determined the services of such experts would cost, and identify all experts or consultants with whom SDN discussed the possibility of doing a study to determine cost-based intrastate access rates.

OBJECTION: SDN objects to the form of this interrogatory. SDN further objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, SDN consulted with Consortia Consulting regarding its Application for Waiver of Switched Access Cost Study. SDN does not have anyone on staff that can prepare a Cost Study. For purposes of this application, estimates of the cost to produce a Cost Study range from \$35,000.00 to \$50,000.00.

The objection to form is not a valid objection to interrogatories. Regarding whether the question is reasonably calculated to lead to the discovery of admissible evidence, given the fact that SDN has put at issue the burden and expense of a cost study as grounds as to why it should not have to perform one, the information is relevant. How SDN determined the cost of the cost study and what comparison it made with potential experts on what a cost study would entail is clearly relevant. While SDN has said it consulted with Consortia Consulting as to costs, it does not state nor make clear that Consortia gave any type of estimate for the cost or what was conveyed regarding the necessary study. This additional information is needed to determine whether Consortia actually provided these estimates or whether these estimates simply were made by SDN in an attempt to justify its claim for a waiver.

Interrogatory No. 6. Identify the total minutes of use for SDN services not subject to tariff for the years 2006 through 2010, and 2011 to date.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

The total number of minutes of use for SDN services not subject to tariff is certainly relevant to figure allocation of cost. Knowing the amount of traffic for non-tariffed services versus tariff services is an integral part in determining allocation of cost. Thus, this information is clearly relevant and admissible. Certainly, if an appropriate preliminary analysis was done, the total minutes for non-tariffed service needed to be considered to arrive at the proper allocation of costs.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Interrogatory No. 7. For each of the five most recent fiscal years, 2006 – 2010, and for 2011 to date, provide financial statements (Income, Cash Flow, and Balance Sheet, audited if available).

- a) Provide revenue information in sufficient detail to show all significant sources of revenue (e.g., local service, toll service, access, USF receipts, equipment, broadband, video, and wireless).
- b) Provide expense information in sufficient detail to show all significant expense categories (e.g., maintenance, interest, depreciation, marketing, legal, finance, and taxes).
- c) Provide investment information in sufficient detail to show all significant investment categories (e.g., interoffice, loop, switching, broadband, video, and wireless).

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is proprietary in nature and cannot be adequately protected by a Protection Order.

Interrogatory No. 7 calls for basic information needed for calculating cost studies and for separating costs and revenues for non-tariffed services. In SDN’s own response to Staff’s Second Set of Data Requests number 2-2, SDN provided general information of the separation

policies followed but no separation information. This information is reasonably calculated to be admissible. Further, SDN should have done this already, if SDN's responses to Staff's Data Requests are accurate.

Regarding SDN's position that the Commission's Protective Order is too weak to protect it, Sprint again refers to its analysis contained above in regard to Interrogatory 2. Certainly, if SDN thought this Commission's Protective Order was too weak or flimsy, SDN should have requested a more powerful protective order in negotiating for the protective order at the beginning of this action.

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL] Therefore, it should be produced.

Interrogatory No. 8. For each of the past fiscal five years, 2006 – 2010, and for 2011 to date, provide the total minutes of use, by month, switched by SDN terminating to any LEC, by LEC and by interexchange carrier.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Total minutes of use are relevant for any cost study. It seems highly unusual that SDN would not provide basic total minutes of use information to its experts for the alleged

preliminary analysis. This is information kept during the regular course of business and should not be overly burdensome to produce. Therefore, it should be produced.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Therefore, the information requested in Interrogatory No. 8 should be compelled.

Interrogatory No. 9. For each of the past fiscal five years, 2006 – 2010, and for 2011 to date, provide the total minutes of use, by month, switched by SDN ultimately terminating to Call Connection Companies, by Call Connection Company, by LEC, and by interexchange carrier.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

This information is relevant for the same reason the information requested in interrogatory No. 8 is relevant. Furthermore, if there is a showing of substantial increase of traffic for call connection companies, this growth in traffic could have an impact on total minutes of use and costs that in turn could impact the tariff rates.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

Interrogatory No. 10. Provide detailed cost and investment information on the switching equipment, and any other SDN-owned equipment, used to provide services ultimately terminating to Call Connection Companies; e.g., vendor invoice, vendor switch model, switch capacity.

OBJECTION: SDN objects to this interrogatory as it is not reasonable calculated to lead to the discovery of admissible evidence.

This information is directly relevant to perform any cost study or even perform a preliminary cost study. Therefore, the information is relevant for this action or to confirm SDN's representations that a cost study would lead to higher rates and, therefore, should be produced.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

Interrogatory No. 11. Provide a detailed diagram showing the call path through SDN-owned or controlled equipment for traffic ultimately terminating to Call Connection Company-owned conference bridge equipment.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, a diagram that depicts a generic view of the transmission path and the rates that apply for switched access service can be found in SDN's Access Tariff at 5.6.1 (D) (1) (pg. 72) (See Exhibit A).

The generic view of the transmission path does not allow Sprint to accurately estimate costs. The call path through SDN-owned or controlled equipment for traffic ultimately terminating to Call Connection Company-owned conference bridge equipment differs from the generic. Given Call Connection Company traffic has grown to a sizable portion of business for SDN, the information on path and equipment used is necessary to determine cost. Sprint would accept a detailed explanation of the call path for calls ultimately destined for Call Connection Companies' conference bridge equipment, including identifying every part of SDN's network that is involved in completing such calls.

Interrogatory No. 12. Provide financial information on any reserves, write-offs, or uncollectibles associated with traffic ultimately delivered to Call Connection Companies.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is proprietary in nature and cannot be adequately protected by a Protection Order.

Certainly financial information write-offs are relevant in a cost study. Regarding the claim that the Commission's Protection Order that SDN agreed to at the beginning of this case lacks sufficient protections to allow SDN to produce these materials, please see the arguments in Response to Interrogatories 2 and 7 above.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED] **[END]**

CONFIDENTIAL]

REQUESTS FOR PRODUCTION

Request No. 1. Produce all documents reviewed in the preliminary analysis performed to indicate that the cost study would support higher rates; all documents discussing the conclusion; and all work papers or other documents produced or created as part of the preliminary analysis.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, See Response to Staff's Data Request and Response to Staff's Data Requests (Second Set).

Given that Request for Production No. 1 only looks for all documentation and work papers used as part of the preliminary analysis, the interrogatory is not overly broad or unduly burdensome and is reasonably calculated to lead to the discovery of admissible evidence. SDN has relied on this preliminary cost study analysis. The information used in allegedly performing this preliminary cost study is relevant and discoverable as are all documents produced in the endeavor.

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END]

CONFIDENTIAL]

Request No. 2. With respect to all experts or outside consultants whose services you considered retaining or employing, produce all information received or exchanged with such experts or outside consultants pertaining to developing cost-based intrastate access rates.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested by the attorney work product doctrine as it is work produce prepared in anticipation of litigation and therefore protected from discovery.

RESPONSE: Without waiving said objection, See Response to Staff's Data Request

and Response to Staff's Data Requests (Second Set).

Request for Production No. 2 is a standard request. A party is entitled to see the information SDN provided its expert and the information and correspondence and exchanges the expert provided to SDN. This information is relevant and admissible. Concerning the reference to responses to Staff's Data Requests, there is no information delineated as information provided to experts or that all the information attached was provided to experts and was all that SDN received from the experts.

Having reviewed the discovery sought and the responses given, one must turn back to the standard for discovery under South Dakota law. "The proper standard for ruling on a discovery motion is whether the information sought is 'relevant to the subject matter involved in the pending action.'" Kaarup, 436 N.W.2d at 20. The aforementioned requests seek information relevant and directly tied to SDN's own allegations for why it is entitled to a waiver. SDN's position, that the information to test its claims for good cause is not discoverable, must be rejected. As such, Sprint requests the Commission find the requisite good cause exists to exercise its authority under A.R.S.D. 20:10:01:22.01; and compel complete discovery responses from SDN.

D. Sprint Should Be Awarded Its Fees For The Preparation And Prosecution Of This Motion To Compel Discovery

Finally, Sprint requests an award of attorney fees to compensate for the costs associated with preparing this motion to compel discovery. SDCL §15-6-37(a)(4) empowers the Commission to award "reasonable expenses incurred in obtaining the order [granting a motion to compel], including attorneys' fees." See also A.R.S.D. 20:10:01:22.01. "A trial court has broad discretion in imposing sanctions under SDCL 15-6-37(a)." Widdoss v. Donahue, 331 NW2d 831, 835 (S.D. 1983) (citing Wright & Miller, Federal Practice & Procedure, § 2284).

SDN cannot demonstrate that its actions were substantially justified or that other circumstances make an award of expenses unjust. See SDCL § 15-5-37(a)(4)(A). As a result, the Commission should award fees to compensate for Sprint's expenses and attorneys' fees in preparing this motion. Sprint can prepare and submit an affidavit detailing the fees and costs incurred within 20 days of entry of the PUC's order.

CONCLUSION

Sprint Communications Company L.P., respectfully requests the Commission find the requisite good cause necessary to issue an order to compel under A.R.S.D. 20:10:01:22.01. Specifically, Sprint requests the Commission compel complete discovery responses from SDN to **Interrogatories Numbers 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 and Requests for Production Numbers 1 and 2.**

Dated this 12th day of October, 2012.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 14th day of October, 2012, a copy of the foregoing was served electronically to:

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