

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE COMPLAINT FILED)
BY SOUTH DAKOTA NETWORK, LLC)
AGAINST SPRINT COMMUNICATIONS)
COMPANY L.P. REGARDING FAILURE TO)
PAY INTRASTATE CENTRALIZED EQUAL)
ACCESS CHARGES AND TO IMMEDIATELY)
PAY UNDISPUTED PORTIONS OF SDN'S)
INVOICES.)**

**ORDER GRANTING MOTION
TO DISMISS COUNT III**

TC09-098

On October 29, 2009, South Dakota Network LLC (SDN) filed its complaint against Sprint Communications LLC (Sprint) for 1) failing to pay intrastate centralized equal access charges at the rates approved by the SDPUC, 2) failing to immediately pay undisputed portions of SDN's invoices as required by SDN's Tariff, and 3) for payment by Sprint of SDN's costs of action, reasonable attorneys fees incurred by SDN, and for twice the amount of damages sustained by SDN, if SDN is required to recover its damages by suit or on appeal. On November 24, 2009, Sprint filed a Motion to Dismiss Count III, a Memorandum in Support of Motion to Dismiss Count III, an Answer, Affirmative Defenses, And Counterclaims and a Third Party Complaint. On December 14, 2009, SDN replied to the Counterclaim of Sprint.

On December 23, 2009, SDN filed a Corrected Reply to Sprint's Counterclaim. On January 22, 2010, Sancom, Inc. (Sancom), Northern Valley Communications, LLC (Northern Valley) and Splitrock Properties, Inc (Splitrock), filed answers to Sprint's Third Party Complaint. On February 11, 2010, Sprint filed a Motion to Dismiss Northern Valley's Cross Claim, a Memorandum in Support of Sprint's Motion to Dismiss Northern Valley's Cross Claim, A Motion to Dismiss Sancom's Cross Claim and a Memorandum in Support of Sprint's Motion to Dismiss Sancom's Cross Claim. On February 12, 2010, Sprint filed a corrected Memorandum in Support of Sprint's Motion to Dismiss Northern Valley's Cross Claim and a corrected Memorandum in Support of Sprint's Motion to Dismiss Sancom's Cross Claim. On February 22, 2010, SDN filed a Response to Sprint's Motion to Dismiss Count III.

The Commission finds that it has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-13 and 49-31.

At its February 23, 2010, meeting, the Commission considered Sprint's Motion to Dismiss Count III of SDN's Complaint. The Commission unanimously voted to grant Sprint's Motion to Dismiss Count III. The Commission found that the double damages and attorneys' fees provisions in SDCL 49-13-14.1 apply only in the case of a suit brought in court and dismissed Count III without prejudice. It is therefore

ORDERED, that the Motion to Dismiss Count III without prejudice is hereby granted.

Dated at Pierre, South Dakota, this 8th day of March, 2010.

<p>CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: <u><i>Stephanie [Signature]</i></u></p> <p>Date: <u>03/08/10</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Hanson
GARY HANSON, Commissioner