

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	<b>NORTHERN VALLEY COMMUNICATIONS, L.L.C.'S ANSWER TO SPRINT COMMUNICATIONS COMPANY LP'S THIRD-PARTY COMPLAINT</b>

Northern Valley Communications, L.L.C. ("Northern Valley"), for its Answer to the Third-Party Complaint of Sprint Communications Company LP, states as follows:

**PARTIES**

1. Northern Valley admits the allegations contained in paragraph 1 of the Third-Party Complaint.
2. Northern Valley is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Third-Party Complaint.
3. Northern Valley is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Third-Party Complaint.

4. Northern Valley admits the allegations contained in paragraph 4 of the Third-Party Complaint, but denies it has a direct or indirect ownership interest in SDN.

5. Northern Valley is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Third-Party Complaint.

### **JURISDICTION**

6. The allegations contained in paragraph 6 of the Third-Party Complaint assert legal conclusions to which no response is required. To the extent a response is required, Northern Valley denies the allegations.

### **BACKGROUND**

7. Northern Valley admits the allegations contained in paragraph 7 of the Third-Party Complaint.

8. The allegations contained in paragraph 8 of the Third-Party Complaint assert legal conclusions to which no response is required. To the extent a response is required, Northern Valley denies the allegations.

9. The allegations contained in paragraph 9 of the Third-Party Complaint assert legal conclusions to which no response is required. To the extent a response is required, Northern Valley denies the allegations.

10. Paragraph 10 of the Third-Party Complaint is Sprint's characterization of SDN's Complaint in this matter, to which no response is required other than the Complaint speaks for itself.

11. Paragraph 11 of the Third-Party Complaint contains Sprint's unsubstantiated characterization of Northern Valley's activities and appears to assert a novel legal conclusion to which no response is required. To the extent a response is required, Northern Valley denies the allegation.

12. Paragraph 12 of the Third-Party Complaint contains Sprint's unsubstantiated characterization of a LEC's conference-calling activities and appears to assert a novel legal conclusion to which no response is required. To the extent a response is required, Northern Valley denies the allegations.

13. Paragraph 13 of the Third-Party Complaint contains Sprint's unsubstantiated characterization of the LECs' activities and appears to assert a novel legal conclusion to which no response is required. To the extent a response is required, Northern Valley denies the allegations. In addition, the Iowa Utilities Board's decision, referenced in this paragraph, has no binding legal effect on this Commission and is currently under appeal.

14. Paragraph 14 of the Third-Party Complaint contains Sprint's unsubstantiated characterization of Northern Valley's activities and appears to assert a novel legal conclusion to which no response is required. To the extent a response is required, Northern Valley denies the allegations. In addition, the Iowa Utilities Board's decision, referenced in this paragraph, has no binding legal effect on this Commission and is currently under appeal. Northern Valley admits it is involved in litigation before the United States District Court for the District of South Dakota in a case captioned *Northern Valley Communications, L.L.C. v. Sprint Communications Company Limited*

*Partnership*, Civ. 08-1003, wherein Sprint has requested an identical declaration with regard to the applicability of Northern Valley's tariff to conference-calling traffic.

15. The allegations contained in paragraph 15 of the Third-Party Complaint assert legal conclusions to which no response is required. To the extent a response is required, Northern Valley denies the allegations.

16. The allegations contained in paragraph 16 of the Third-Party Complaint assert legal conclusions to which no response is required. To the extent a response is required, Northern Valley denies the allegations.

17. Northern Valley is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Third-Party Complaint. However, to the extent that the paragraph can be interpreted to mean that Sprint was lawfully entitled to withhold amounts billed or to unilaterally impose a credit of amounts due for undisputed traffic, the allegation is denied.

### **COUNT I DECLARATORY RULING**

18. Paragraph 18 of the Third-Party Complaint restates Sprint's prior allegations, and Northern Valley restates its responses as contained in this Answer.

19. Northern Valley denies the allegations contained in paragraph 19 of the Third-Party Complaint.

20. Northern Valley denies the allegations contained in paragraph 20 of the Third Party Complaint.

**COUNT II**  
**LIABILITY FOR AMOUNTS BILLED BY SDN**

21. Paragraph 21 of the Third-Party Complaint restates Sprint's prior allegations, and Northern Valley restates its responses as contained in this Answer.

22. Northern Valley denies the allegations contained in paragraph 22 of the Third Party Complaint.

23. Northern Valley denies the allegations contained in paragraph 23 of the Third Party Complaint.

**COUNT III**  
**REFUND OF AMOUNTS UNLAWFULLY BILLED BY**  
**CAPITAL PURSUANT TO STATE ACCESS TARIFF**

24. Paragraph 24 of the Third-Party Complaint restates Sprint's prior allegations, and Northern Valley restates its responses as contained in this Answer.

25. The allegations contained in paragraph 25 of the Third-Party Complaint do not involve Northern Valley and, therefore, no response is required.

26. The allegations contained in paragraph 26 of the Third-Party Complaint do not involve Northern Valley and, therefore, no response is required.

27. The allegations contained in paragraph 27 of the Third-Party Complaint do not involve Northern Valley and, therefore, no response is required.

28. The allegations contained in paragraph 28 of the Third-Party Complaint do not involve Northern Valley and, therefore, no response is required.

**PRAYER FOR RELIEF**

Northern Valley responds to this clause in the Third-Party Complaint consistent with the allegations contained in this Answer, and that Sprint is not entitled to any relief whatsoever, and that judgment should be entered in favor of Northern Valley and against Sprint.

**GENERAL DENIAL**

Each and every allegation in the Third-Party Complaint not specifically admitted as set forth herein, is denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Sprint's claims fail to state a claim for which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Sprint's claims are barred by its own breaches of contract.

**THIRD AFFIRMATIVE DEFENSE**

Sprint's claims are barred because the Commission lacks jurisdiction to resolve the dispute.

**FOURTH AFFIRMATIVE DEFENSE**

Sprint's claims are barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Sprint's claims are barred, in whole or in part, by the applicable statute of limitations.

## **SIXTH AFFIRMATIVE DEFENSE**

Sprint's claims are barred, in whole or in part, by the doctrine of collateral estoppel.

## **SEVENTH AFFIRMATIVE DEFENSE**

Sprint's claims are barred, in whole or in part, by the doctrine of *res judicata*.

### **CROSS-CLAIM**

Northern Valley Communications, L.L.C., for its cross-claim against Sprint Communications Company LP, states and alleges as follows:

### **NATURE OF THE CASE**

1. Northern Valley Communications, L.L.C. brings this action against Sprint Communications Company LP to recover on an account for failure of Sprint Communications Company LP to pay to Northern Valley Communications, L.L.C. the amounts due under state tariffs for the provisioning of originating and terminating telephone access services.

### **THE PARTIES**

2. Northern Valley Communications, L.L.C., ("Northern Valley") 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 LP ("Sprint") 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 Cross-claim pursuant to SDCL 15-6-14(a), SDCL 49-13-1, SDCL 1-26-15 and ARSD 20:10:01:01.02, ARSD 20:10:01:34.

## FACTUAL ALLEGATIONS

5. Northern Valley is a competitive local exchange carrier ("CLEC"), which provides telephone and other services through wires to the homes and businesses of its customers. Northern Valley also provides originating and terminating access services to long-distance companies, which allow the long-distance companies to transmit long-distance calls even though they do not own or lease the telephone lines that connect to the users' telephones.

6. Sprint is an interexchange (i.e., long distance) carrier that provides long distance service.

7. Sprint utilized the originating and terminating services provided by Northern Valley. Since September 1, 2007, Northern Valley has billed Sprint, on a monthly basis, for its use of Northern Valley's services in accordance with the applicable rates set forth in its tariffs filed with the Federal Communications Commission ("FCC") and the South Dakota Public Utilities Commission ("Commission"). Attached hereto as **Exhibit 1** is the summary of the invoices from September 1, 2007, through January 1, 2010, reflecting a balance due to Northern Valley from Sprint, as of January 1, 2010, in the sum of **\$15,488,021.66**, of which **\$15,816.72** is intrastate switched access charges relating to conference calling traffic, and **\$631,911.82** is intrastate switched access charges relating to non-conference-calling traffic (i.e. traditional traffic).



8. Sprint has failed and refused and continues to fail and refuse to pay any and all of the invoiced amounts (**Exhibit 1**), even though **\$631,911.82** of the total is intrastate non-conference-calling traffic (i.e traditional traffic), for which Sprint's liability is undisputed and over which this Commission has jurisdiction.

### **COUNT I BREACH OF CONTRACT**

9. Northern Valley realleges the preceding paragraphs of the Cross-claim as if set forth fully herein.

10. Pursuant to state regulations, Northern Valley has filed tariffs with the Commission, which tariffs have the force and effect of law and the terms of which constitute valid and binding contracts.

11. Northern Valley has invoiced Sprint pursuant to rates as set forth in its state tariffs as outlined above.

12. Sprint failed and refused to pay those amounts invoiced to it by the Northern Valley, constituting a breach of contract.

13. As a result of Sprint's breach of Northern Valley's tariff, Northern Valley has suffered damages in the amount of at least **\$647,728.54**, plus interest and applicable fees, which represents the intrastate portion of the switched access charges, of which **\$631,911.82** represents non-conference-calling intrastate traffic.

### **COUNT II BREACH OF IMPLIED CONTRACT**

14. Northern Valley realleges the preceding paragraphs of the Cross-claim as if set forth fully herein.

15. Northern Valley has validly filed tariffs with the Commission in accordance with applicable South Dakota law.

16. Northern Valley has supplied services and submitted invoices to Sprint that are consistent with its intrastate tariffs for services provided.

17. Sprint accepted services and paid for them, pursuant to the intrastate tariffed rates, for a period of time, thereby creating an implied contract.

18. Sprint has subsequently, and without justification, failed and refused and continues to fail and refuse to pay Northern Valley's invoices, including amounts due for undisputed traditional traffic. Sprint's actions constitute a material uncured breach of the tariff and of the implied contract among the parties resulting from Sprint's conduct.

19. As a result of Sprint's breach of Northern Valley's tariff, Northern Valley has suffered damages in the amount of at least **\$647,728.54**, plus interest and applicable fees, which represents the intrastate portion of the switched access charges, of which **\$631,911.82** represents non-conference-calling intrastate traffic.

### **COUNT III UNJUST ENRICHMENT**

20. Northern Valley realleges the preceding paragraphs of the Cross-claim as if set forth fully herein.

21. Northern Valley originated and terminated long distance calls for Sprint. This conferred a benefit upon Sprint because Sprint was able to collect from its customers for providing long distance service. Sprint has not paid Northern Valley for providing any services, traditional traffic or conference-calling traffic.

22. It would be inequitable for Sprint to retain the benefit of the services provided by Northern Valley without properly compensating Northern Valley for the value of the services provided.

23. As a result, Northern Valley has suffered damages in the amount of at least **\$647,728.54**, plus interest and applicable fees, which represents the intrastate portion of the switched access charges, of which **\$631,911.82** represents non-conference-calling intrastate traffic.

**WHEREFORE**, Northern Valley requests judgment against Sprint as follows:

1. Sprint be ordered to pay to Northern Valley **\$631,911.82**, the intrastate non-conference-calling traffic (i.e traditional traffic), plus interest and applicable fees, or such other amount as is proven at trial of this matter;
2. The Commission determine the **\$15,816.72** in intrastate switched access charges, relating to conference calling traffic, is compensable under Northern Valley's intrastate tariff, and that Sprint be ordered to pay to Northern Valley such amount, plus interest and applicable fees, or such other amount as is proven at trial of this matter;
3. For Northern Valley's costs, disbursements and attorney fees;
4. Award Northern Valley punitive damages as a result of Sprint's willful, wanton, malicious and reckless behavior;
5. Issue a preliminary and permanent injunction barring Sprint from continuing to engage in the conduct alleged herein and directing Sprint to

pay access charges in the future, if Sprint continues to use Northern Valley's services;

6. Sprint's Third Party Complaint against Northern Valley be dismissed on the merits and with prejudice; and
7. For such other and further relief as the Commission deems just and equitable.

Dated this 22nd day of January 2010.

BANTZ, GOSCH & CREMER, L.L.C.

/s/ James M. Cremer

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