

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER \_\_\_\_\_

IN THE MATTER OF THE )  
COMPLAINT OF SOUTH DAKOTA )  
NETWORK, LLC, AGAINST SPRINT )  
COMMUNICATIONS COMPANY, )  
LP )  
)  
)  
)

COMPLAINT

South Dakota Network, LLC (hereinafter “SDN”), by and through its attorney of record, Darla Pollman Rogers, of Riter, Rogers, Wattier & Northrup, LLC, Pierre, South Dakota, hereby submits this Complaint against Sprint Communications Company, LP (“Sprint”) for (1) failing to pay intrastate centralized equal access charges at the rates approved by the South Dakota Public Utilities Commission (“Commission”) and set forth in the SDN Tariff on file with the Commission; (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. This is a Complaint pursuant to ARSD 20:10:01:07.01 and SDCL Ch. 49-13.

BACKGROUND

1. SDN is a limited liability company with its principal place of business at 2900 West 10<sup>th</sup> Street, Sioux Falls, South Dakota, 57104.

2. SDN provides various telecommunications services, including but not limited to switched access services and lease of facilities, to various interexchange carriers.

3. Sprint is a corporation with its principal office of business at 6450 Sprint Parkway, Overland Park, Kansas 66251, and is authorized to do business in the state of South Dakota, including the provision of interexchange telecommunications services to various residential and business customers in South Dakota.

#### COUNT I

4. SDN incorporates paragraphs one (1) through three (3) as previously alleged.

5. Pursuant to SDN's applicable tariffs, Sprint ordered, used, and benefited from intrastate and interstate centralized equal access service (CEAS) from SDN through SDN's tandem switch in Sioux Falls, South Dakota. SDN provided originating and terminating access services to Sprint for customers who selected Sprint as their interexchange carrier, for the period from April 1, 2009 to the present time, pursuant to the SDN tariff.

6. Sprint was charged for the intrastate centralized equal access service based upon the rates and conditions established in the SDN tariff, which is approved by and on file with the Commission.

7. SDN sent monthly invoices to Sprint for CEAS, but Sprint has failed to pay for any CEAS for the months of April, May, June, July, and August 2009.

8. By receiving and utilizing CEAS, Sprint is obligated to pay for that service not only under the tariff, but also under applicable South Dakota law, as Sprint is

responsible for paying its obligation for the value of the benefit conferred; otherwise Sprint would be unjustly enriched.

9. Sprint's actions of refusing to pay for CEAS provided by SDN are unjust and unreasonable, and result in damages to SDN.

10. SDN has contacted Sprint and demanded payment of said invoices, but Sprint continues to refuse to pay for the services received.

11. Sprint owes SDN a total of \$178,273.61 for intrastate minutes of use as of September 1, 2009.<sup>1</sup> This amount includes unpaid intrastate CEAS for April, May, June, July, and August of 2009 (invoiced in May, June, July, August and September), which includes late payment penalties as authorized in SDN's Tariff, as set forth in the summary of invoices attached hereto as Exhibit A. SDN is also entitled to interest at the statutory rate for all unpaid balances.

## COUNT II

12. SDN incorporates paragraphs one (1) through eleven (11) as previously alleged.

13. SDN's South Dakota Tariff provides that "[I]n the event of a dispute concerning the bill, SDN may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill." (SDN Tariff, Section 2.4.1(B)(2)).

14. SDN has contacted Sprint and demanded payment of the undisputed portion of the invoices, but Sprint continues to refuse to pay for even the undisputed portion of the invoices.<sup>2</sup>

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<sup>1</sup> Sprint owes SDN a total of \$601,272.02 as of September 1, 2009 for intrastate and interstate CEAS for April, May, June, July, and August of 2009 (invoiced in May, June, July, August and September) (see Exhibit A).

<sup>2</sup> The undisputed portion of the invoices for May through September, 2009, is \$274,866.81 (see Exhibit A).

15. In response to the April 1, 2009 SDN invoice, Sprint made a “back claim” for dates June of 2007 through April of 2009, in the amount of \$1,704,262.08. The back claim did not distinguish between intrastate and interstate charges.

16. With regard to the undisputed portion of the SDN invoices dated May through September, 2009, Sprint has engaged in an unauthorized and illegal self-help “accounting mechanism” whereby Sprint applies a “credit” to the disputed portion of the invoices (including the back claim amount), rather than paying the undisputed portion of the invoices, as demanded by SDN.

17. Sprint’s refusal to pay for the undisputed portion of the service provided by SDN constitutes a deliberate failure by Sprint to comply with the procedures contained in SDN’s Tariff, on file with and approved by the Commission.

### COUNT III

18. SDN incorporates paragraphs one (1) through seventeen (17) as previously alleged.

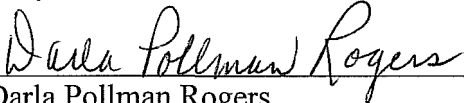
19. Sprint’s refusal to pay SDN’s tariffed access rates and refusal to pay the undisputed amounts of SDN’s invoices constitutes omission by Sprint of doing an act or thing required to be done, that is, payment of tariffed rates for receipt of CEAS and failure to follow SDN’s tariff with regard to the undisputed amount of invoices.

20. Pursuant to SDCL 49-13-14.1, if SDN is ultimately required to recover its damages awarded herein by suit or on appeal, Sprint shall be liable to SDN for twice the amount of the damages sustained by SDN, for SDN’s costs of action, and for reasonable attorneys fees incurred by SDN.

WHEREFORE, SDN prays for judgment against Sprint as follows:

- A. Payment for unpaid intrastate switched access services and late payment penalties;
- B. Immediate payment of the undisputed portion of invoices;
- C. For SDN's costs and expenses herein;
- D. For pre-judgment interest and post-judgment interest on the unpaid balances herein; and
- E. For such other and further relief as the Commission deems just.


DATED this 29<sup>th</sup> day of October, 2009

  
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South Dakota Network, LLC, hereby affirms that the statements of fact above are accurate to the best of its knowledge.

South Dakota Network, LLC:

By:   
\_\_\_\_\_  
Mark Shlanta, CEO

# **EXHIBIT A**

SOUTH DAKOTA NETWORK, LLC  
 SCHEDULE OF DISPUTED SPRINT CHARGES

Invoice Date	MOU Period	Amount Invoiced			Total Invoiced	Amount Sprint Disputed	Undisputed Balance	Note
		Interstate	Intrastate	Late Charges				
5/1/2009	04/01/09 - 04/30/2009	69,451.27	16,472.20	0.00	85,923.47	52,153.96	33,769.51	Sprint has not paid the undisputed balance
6/1/2009	05/01/2009 - 05/31/2009	75,932.60	14,692.53	623.14	91,248.27	59,692.90	31,555.37	Sprint has not paid the undisputed balance
7/1/2009	06/01/2009 - 06/30/2009	86,070.67	43,395.38	0.00	129,466.05	66,496.46	62,969.59	Sprint has not paid the undisputed balance
8/1/2009	07/01/2009 - 7/31/2009	84,639.57	44,254.92	5,658.32	134,552.81	74,197.02	60,355.79	Sprint has not paid the undisputed balance
9/1/2009	08/01/09 - 08/31/2009	92,481.64	59,458.58	8,141.20	160,081.42	73,864.87	86,216.55	Sprint has not paid the undisputed balance

Note - Sprint has also sent SDN a dispute totalling \$1,704,262.08 for the period 06/07 - 04/09