

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER TC 09-098

IN THE MATTER OF THE COMPLAINT)
OF SOUTH DAKOTA NETWORK, LLC,)
AGAINST SPRINT COMMUNICATIONS)
COMPANY LP)
)
IN THE MATTER OF THE THIRD PARTY)
COMPLAINT OF SPRINT)
COMMUNICATIONS COMPANY LP)
AGAINST SPLITROCK PROPERTIES,)
INC., NORTHERN VALLEY)
COMMUNICATIONS, INC., SANCOM,)
INC., AND CAPITAL TELEPHONE)
COMPANY)

**SPRINT COMMUNICATIONS COMPANY LP'S
THIRD PARTY COMPLAINT**

Sprint Communications Company LP, for its Third Party Complaint against Sancom, Inc. ("Sancom"), Splitrock Properties, Inc. ("Splitrock"), Northern Valley Communications, LLC ("Northern Valley"), and Capital Telephone Company ("Capital") respectfully alleges as follows:

PARTIES

1. 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.

2. On information and belief, Sancom is a South Dakota corporation with its principal place of business in Mitchell, South Dakota. Sancom is a competitive local exchange carrier ("LEC") certificated by the South Dakota Public Utilities Commission ("Commission").

On information and belief, Sancom has a direct or indirect ownership interest in South Dakota Network, LLC (“SDN”), which is the Complainant in this case.

3. On information and belief, Splitrock is a South Dakota corporation with its principal place of business in Garretson, South Dakota. Splitrock is an incumbent LEC (“ILEC”) certificated by the Commission. On information and belief, Splitrock has a direct or indirect ownership interest in SDN, which is the Complainant in this case.

4. On information and belief, Northern Valley is a South Dakota limited liability company with its principal place of business in Aberdeen, South Dakota. Northern Valley is a CLEC certificated by the Commission. On information and belief, Northern Valley has a direct or indirect ownership interest in SDN, which is the Complainant in this case.

5. On information and belief, Capital is a Nevada company that was certificated by the Commission as a CLEC, but surrendered its certificate on or about July 29, 2009.

JURISDICTION

6. The Commission has jurisdiction over this Third Party Complaint 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.

BACKGROUND

7. Sprint has been certificated by the Commission to provide intrastate interexchange service within South Dakota. In its provision of intrastate interexchange services, Sprint purchases intrastate switched access services from originating carriers, intermediary carriers, and terminating carriers in accordance with tariffs filed with and approved by the Commission.

8. The rates for intrastate switched access services are regulated by the Commission pursuant to SDCL Chapter 49-31 and ARSD Chapter 20:10:27.

9. In accordance with South Dakota law, including the filed rate doctrine, intrastate switched access charges may be assessed only pursuant to and in a manner consistent with a filed and approved tariff. In the absence of tariff authority to bill for a call, intrastate switched access charges may not be billed, and no payment is due.

10. South Dakota Network, LLC (“SDN”) filed the above Complaint against Sprint alleging that Sprint is liable to pay intrastate switched access charges, including access charges for calls delivered to Sancom, Splitrock, Northern Valley, and Capital, which are Participating Telecommunications Companies under SDN’s South Dakota Tariff No. 2.

11. Sancom, Splitrock, Northern Valley, and Capital have been identified by Sprint as engaged in traffic pumping activities.

12. Traffic pumping occurs when a LEC partners with a second company (“Call Connection Company”) that has established free or nearly free conference calling, chat-line, or similar services that callers use to connect to other callers or recordings. The Call Connection Company generates huge call volumes to numbers assigned to the LEC, the LEC unlawfully bills those calls as if they are subject to access charges, interexchange carriers unwittingly pay those bills, and the LEC and Call Connection Company share the profits. These schemes normally occur in rural areas where LECs have high enough access rates to allow them to share profits with the Call Connection Companies.

13. For many reasons, LECs do not provide switched access services to interexchange carriers (“IXCs”) for calls delivered to Call Connection Companies. For example, the Iowa Utilities Board decided on September 21, 2009, in its docket FCU 07-02 that intrastate switched access charges do not apply to calls delivered to Call Connection Companies because 1) Call Connection Companies are not end users of local exchange service, 2) such calls are not

terminated to an end user's premises, and 3) such calls do not terminate in the LEC's certificated local exchange area. The Iowa Utilities Board ordered LECs to refund improperly billed intrastate switched access charges billed to IXCs, including Sprint.

14. For reasons identified in the Iowa Board's order, and for other reasons, calls delivered to Call Connection Companies are not subject to switched access charges under the Participating Telecommunications Companies' intrastate switched access tariffs. Sprint is presently involved in litigation with Sancom, Splitrock and Northern Valley in which it has alleged that those three Participating Telecommunications Companies have wrongfully billed Sprint intrastate switched access charges for traffic delivered to Call Connection Companies. Those cases remain pending.

15. Because the calls to the Participating Telecommunications Companies are not subject to intrastate switched access charges, SDN does not provide centralized equal access service under its South Dakota Tariff No. 2 when it delivers such calls to Participating Telecommunications Companies.

16. Sancom, Splitrock, Northern Valley, and Capital have been engaged in traffic pumping since at least June of 2007. SDN has unlawfully billed Sprint centralized switched access charges for calls delivered to Call Connection Companies and Sprint paid those bills through May 2009. On or about June 11, 2009, Sprint submitted a dispute and request for refund to SDN with respect to switched access charges assessed by SDN for traffic delivered from Sprint, through SDN, to Sancom, Splitrock, Northern Valley, and Capital. That dispute was for time periods between June 2007 and April 2009, and Sprint demanded a refund in the amount of \$1,704,262.08. SDN has refused to issue a refund.

17. Beginning with SDN's bill dated May 2009, Sprint has disputed its obligation to pay SDN's switched access charges for traffic delivered to Sancom, Splitrock, Northern Valley, and Capital. After reducing the bill amount by the amount of the unlawful charges, Sprint has applied the remaining balance to reduce the account payable debit balance created by Sprint's refund claim for prior amounts unlawfully billed by SDN. This process has reduced but not extinguished SDN's liability to Sprint on its refund claim.

**Count I
Declaratory Ruling**

18. Sprint restates and reallages its prior allegations.

19. There is an actual controversy between Sprint and Sancom, Splitrock, Northern Valley, and Capital with respect to whether those companies provide intrastate switched access services for calls to Call Connection Companies. The resolution of this controversy is necessary to determine whether SDN has properly billed intrastate switched access charges for those calls.

20. Sprint is entitled to a declaration pursuant to ARSD 20:10:01:34 and SDCL 21-24-1 that Sancom, Splitrock, Northern Valley, and Capital cannot assess intrastate switched access charges for calls to Call Connection Companies, and that Sprint has no access charge liability for such calls on and after June 2007, and/or that their actions constitute an unjust or unreasonable practice.

**Count II
Liability for Amounts Billed by SDN**

21. Sprint restates and realleges its prior allegations.

22. Sancom, Splitrock, Northern Valley, and Capital have generated traffic to Call Connection Companies by entering into arrangements that violate South Dakota Statutes, the Commission's Rules, and their filed tariffs. These violations of law have caused damage to Sprint as SDN has billed Sprint intrastate switched access charges.

23. In the event Sprint is liable to SDN for amounts demanded in the Complaint, Sancom, Splitrock, Northern Valley, and Capital, pursuant to the requirements of equity, contribution and/or indemnity, are liable for any amounts attributable to calls delivered to their Call Connection Company partners.

Count III
Refund of Amounts Unlawfully Billed by
Capital Pursuant to State Access Tariff

24. Sprint restates and realleges its prior allegations.

25. Between July 2007 and August 2008 Capital billed Sprint pursuant to its Tariff No. 1, South Dakota Switched Access Services (“Capital Tariff”) for calls that are not subject to that tariff.

26. In accordance with South Dakota Law, including the filed rate doctrine, Capital can collect only those charges authorized by the Capital Tariff, and must refund amounts unlawfully billed and collected.

27. Capital has billed, collected and retained amounts over and above what is authorized by the Capital Tariff or amounts that are unreasonable or unjust.

28. Sprint is entitled to a judgment against Capital in an amount to be proven at a hearing, plus interest and penalties as provided the Capital Tariff and South Dakota law.

PRAYER FOR RELIEF

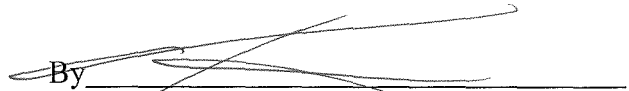
For the foregoing reasons, Sprint is entitled to judgment:

1. On Count I, for a declaration that that Sancom, Splitrock, Northern Valley, and Capital cannot assess intrastate switched access charges for calls to Call Connection Companies;
2. On Count II, for an award of money damages in an amount to be determined at a hearing;

3. On Count III, for an award of money damages against Capital in an amount to be proven at a hearing, plus applicable interest and penalties; and
4. Awarding Sprint such other and further relief as the Commission deems just and equitable.

Dated: November 23, 2009

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