

# EXHIBIT A

**From:** Goldman, Marc A [mailto:MGoldman@jenner.com]  
**Sent:** Monday, March 22, 2010 6:33 PM  
**To:** Buntrock, Ross; Pozza, Duane  
**Cc:** Carter, David; 'jcremer@bantzlaw.com'; Cheryle Gering  
**Subject:** RE: Primary Jurisdiction Referral

Ross,

Attached a the draft you requested. This one is for Northern Valley. We'd obviously have to switch the names to file a parallel version for Sancom.

Let us know if you're OK with this draft.

Marc

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**From:** Buntrock, Ross [mailto:Buntrock.Ross@ARENTFOX.COM]  
**Sent:** Wednesday, March 17, 2010 4:22 PM  
**To:** Goldman, Marc A; Pozza, Duane  
**Cc:** Carter, David; 'jcremer@bantzlaw.com'  
**Subject:** RE: Primary Jurisdiction Referral

Marc,

We believe that a referral is necessary to vest the South Dakota PUC with jurisdiction given that both parties have claims for damages pending before the court Would you prepare and circulate your proposed motion to clarify/modify Judge Schreier's Primary Jurisdiction Referral order?

Thanks,

Ross

**Ross Buntrock**  
Partner

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**From:** Goldman, Marc A [mailto:MGoldman@jenner.com]  
**Sent:** Wednesday, March 17, 2010 1:22 PM  
**To:** Buntrock, Ross; Pozza, Duane  
**Cc:** Carter, David; jcremer@bantzlzaw.com  
**Subject:** RE: Primary Jurisdiction Referral

Ross,

The note you sent below almost immediately became overtaken by events. But some uncertainty remains on the issue you raise on the intrastate claims. Now that the interstate claims have been referred, we certainly agree with your position below and in your reply briefs that the intrastate claims should be addressed by the PUC. We'd propose filing a joint motion to clarify/modify that asks the court either to explicitly refer the intrastate claims or to stay the intrastate claims while the PUC resolves the issues in its pending proceeding.

Let me know your view.

Thanks,

Marc

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**From:** Buntrock, Ross [mailto:Buntrock.Ross@ARENTFOX.COM]  
**Sent:** Wednesday, March 10, 2010 5:49 PM  
**To:** Goldman, Marc A; Pozza, Duane  
**Cc:** Carter, David; 'jcremer@bantzlzaw.com'  
**Subject:** Primary Jurisdiction Referral

Duane and Marc:

One item that we neglected to discuss in today's call was whether Sprint intends to continue to oppose our primary jurisdiction referral motions.

As we noted in our reply brief, Sprint's position against the referral is contradictory to its decision to bring Northern Valley, Sancom, and Splitrock in as third-party defendants in the SDN v. Sprint case pending before the South Dakota PUC, wherein Sprint asked the PUC to declare whether or not the LECs' tariffs covered the intrastate traffic at issue in the federal litigation. Thereafter, Sprint's local counsel moved to dismiss Northern Valley and Sancom's counterclaims on the basis that NVC and Sancom had elected their respective remedies by pursuing damages in the federal litigation (while asserting that its claim for declaratory judgment could stand).

In our reply to that motion, we highlighted Sprint's contradictory position in the Beehive litigation where Sprint successfully argued that a claim for damages in federal court and a request for declaratory judgment could not co-exist and that, as a result, Sprint had elected its remedy and could not maintain its declaratory judgment claim against NVC and Sancom. We asked the PUC to either dismiss Sprint's claims against us or hold the case in abeyance until the court decided the primary jurisdiction motions. Apparently recognizing the likelihood that its claims would be dismissed, Sprint's local counsel, Phil Shenkenburg has since indicated that Sprint is amendable to having the PUC proceeding stayed until the referral motions are decided. He indicated, however, that he did not have authority to discuss whether Sprint would join us in the primary jurisdiction referral request.

Can you clarify at your earliest opportunity Sprint's position about whether or not the PUC should be involved in addressing the applicability of the intrastate tariffs? If it believes that the PUC should be involved, will Sprint so inform the court?

Regards,  
Ross

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Partner

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

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NORTHERN VALLEY  
COMMUNICATIONS, LLC,

Plaintiff and Counterclaim  
Defendant,

vs.

SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP,

Defendant, Counterclaimant,  
and Third-Party Plaintiff,

vs.

GLOBAL CONFERENCE PARTNERS,  
LLC.

Third-Party Defendant.

CIV. 08-1003-KES

**Northern Valley and Sprint's Joint  
Motion To Modify Or Clarify Referral  
Decision With Respect To Intrastate  
Claims**

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On March 15, 2009, this Court issued an order referring several important issues related to the interstate traffic at issue in the above-captioned case and other similar cases to the Federal Communications Commission ("FCC"). It did not specifically address whether issues related to intrastate traffic should be referred to the South Dakota Public Utilities Commission ("SD PUC"). Northern Valley Communications, LLC ("Northern Valley") and Sprint Communications Company, LP ("Sprint") now jointly request that the Court refer questions

related to the intrastate traffic to the SD PUC, or, in the alternative, stay this case with respect to the issues related to intrastate traffic until the SD PUC resolves the claims related to this traffic in the action already before it. Sprint and Sancom, Inc. are filing an identical motion in CIV. 07-4107-KES.

**A. This Case Includes Claims Related to Intrastate Traffic That Raise The Same Sorts Of Questions The Court Found Justified Referral Of Interstate Issues To The FCC.**

While the bulk of the traffic at issue in this case is interstate traffic, the claims of Northern Valley and the counterclaims of Sprint also include claims related to intrastate traffic. Some of the calls to conference call or chat line providers are intrastate, rather than interstate, long-distance calls. As with the interstate calls, Northern Valley has billed Sprint access charges for this intrastate traffic. As with the interstate calls, Northern Valley seeks to collect amounts it billed that Sprint did not pay, and Sprint seeks refunds of amounts it paid that it does not believe it owed.

The parties' claims related to this intrastate traffic are claims under state law. The tariffs that control whether the intrastate traffic is access traffic are intrastate tariffs. With respect to this intrastate traffic, the SD PUC plays the same role that the FCC plays with respect to the interstate traffic. It has the same expertise related to tariff terms, classification of services and rates. *See, e.g., In re Pub. Serv. Co.*, 560 N.W. 2d 925, 930 (S.D. 1997) (outlining statutory authority of SD PUC).

In their consolidated reply on the referral motions, Northern Valley and Sancom noted that they agreed with an argument made by AT&T that any arguments justifying referral of interstate questions to the FCC would equally justify referral of intrastate questions to the SD PUC. Northern Valley and Sancom explicitly "incorporate[d] AT&T's suggestion into their

motion.” *See* Consolidated Reply at 26. Sprint, too, agrees that if, as this court found, FCC expertise is important in deciding specified questions for interstate traffic, SD PUC expertise is equally useful in deciding these questions for intrastate traffic. In other words, Sprint believes that given the Court’s referral of certain interstate questions to the FCC, it would not make sense for this Court to decide the parallel intrastate questions itself.

**B. There Is Already An Open Proceeding At the PUC.**

While the above-captioned action was pending in court, South Dakota Network (SDN), the tandem provider in South Dakota, filed a complaint against Sprint at the SD PUC. The Sprint traffic that ultimately is routed by Northern Valley to conference call and chat line providers comes to it from SDN, which receives the traffic from Sprint. Like Northern Valley, SDN bills Sprint access charges (tandem charges) on this traffic. Sprint has not been paying these charges for the same sorts of reasons it is not paying similar charges billed by Northern Valley. Sprint’s dispute of these charges led to SDN’s complaint at the SD PUC.

After SDN filed that complaint, Sprint filed a third party complaint to bring in Northern Valley, Sancom and Splitrock Properties, whom it believed were integral for the PUC to understand the traffic at issue and then evaluate the tariff and related legal questions. Sancom and Northern Valley then filed cross-claims at the PUC.

During briefing of a motion Sprint made to dismiss those cross claims, Northern Valley and Sancom stated that the PUC was best suited to decide all of the intrastate claims. They argued, however, that Sprint could not pursue its intrastate claims at the PUC while Sprint was pursuing claims on the same traffic before this Court. They thus asked the PUC to hold the case in abeyance until this Court decided the primary jurisdiction motions. In their view, a decision

by this Court in favor of referral was necessary to vest the PUC with jurisdiction over the intrastate claims.

However, because the Court's referral decision does not discuss the intrastate claims, some uncertainty remains regarding the jurisdictional argument that Northern Valley and Sancom advanced at the PUC. A decision by this Court can ensure what all parties agree is best under the present circumstances: that the intrastate issues bearing on this case can and should be resolved by the PUC in the existing PUC action. That will in turn help ensure that all integral parties are before the PUC when it evaluates the issues concerning the charges billed by SDN.

This Court can ensure that the key intrastate issues are decided by the SD PUC in one of two ways. It can either (1) refer the issues to the SD PUC, just as it referred the interstate issues to the FCC, or (2) it can simply make clear that proceedings in this court will not resume until the SD PUC has decided the intrastate claims of Sprint and Northern Valley now pending before it. That would be similar to what the district court did in *Tekstar* where it referred questions related to interstate traffic to the FCC, while staying the case until both (1) the FCC decided the referred issues and (2) the Minnesota Public Utilities Commission decided the claims in the action pending before it concerning Tekstar's intrastate traffic. *See Tekstar Commc'ns, Inc. v. Sprint Commc'ns Co.*, Civil No. 01-1130 (JNE/RLE), 2009 WL 2155930, at \*3 (D. Minn. July 15, 2009).

As Sancom and Northern Valley explained in their consolidated reply brief on the referral motions, a decision by this Court that the PUC should decide issues related to the intrastate claims would not lead to additional delay given the open proceeding at the PUC. Indeed, the SD PUC is likely to act significantly faster than the FCC where there is not yet an open proceeding,



particularly given the complexity the FCC will face in managing the issues from multiple cases that have now been referred to it.

### **CONCLUSION**

For the foregoing reasons, the parties jointly request that this Court clarify or modify its referral order, so that resumption of proceedings in this Court is contingent on resolution of the claims between Sprint, Sancom, and Northern Valley in the pending SD PUC action. In the alternative, this Court should refer to the SD PUC questions related to intrastate traffic that parallel the questions it referred to the FCC for interstate traffic and make resumption of proceedings in this Court contingent on resolution of those questions.