

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER TC09-098

IN THE MATTER OF THE)	AMENDED
COMPLAINT OF SOUTH DAKOTA)	STATEMENT OF
NETWORK, LLC, AGAINST SPRINT)	UNDISPUTED MATERIAL
COMMUNICATIONS COMPANY,)	FACTS
LP)	
)	
)	

COMES NOW, South Dakota Network, LLC (SDN), by and through its undersigned attorneys, and respectfully submits its Amended Statement of Undisputed Material Facts as follows:

1. SDN filed an Amended Complaint against Sprint Communications Company, LP (Sprint) on June 7, 2010, before the South Dakota Public Utilities Commission (Commission) alleging Sprint has (1) failed to pay intrastate centralized equal access charges at the rates approved by the Commission and set forth in the SDN Tariff on file with the Commission; (2) failed to immediately pay undisputed portions of SDN's invoices, as required by SDN's Tariff; and (3) requesting 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. (See Amended Complaint, Introductory Paragraph)
2. SDN is a limited liability company with its principal place of business at 2900 West 10th Street, Sioux Falls, South Dakota, 57104. (See Amended Complaint, ¶ 1)
3. SDN provides various telecommunications services, including but not limited to switched access services and lease of facilities, to various interexchange carriers. (See

Amended Complaint, ¶ 2; Sprint's Answer to Amend Complaint, ¶ 3, SDN Tariff, Section 5.1)

4. Sprint is a limited partnership 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. (See Amended Complaint, ¶ 3; Sprint's Answer to Amended Complaint ¶ 4)

5. SDN is the centralized equal access provider for many rural local exchange carriers (LECs) in South Dakota. SDN provides the software for equal access and a concentration and distribution function for originating and terminating traffic between the end offices of Participating Telecommunications Companies (PTC) and the SDN access tandem at which SDN's interexchange carrier (IXC) customers establish connectivity for the exchange of such traffic. (SDN Tariff, Section 5.1; Sprint's Counterclaim, ¶ 33)

6. The services are provided by SDN to the IXCs through the use of an Access Tandem and are referred to in its tariff as Centralized Equal Access, and Switched Transport, collectively "Switched Access" (SDN Tariff, Section 5.1). Centralized Equal Access allows end users to automatically select a presubscribed long distance carrier for toll calls via a centralized presubscription look-up and concentration service for delivery of traffic of end user long distance traffic to that end user's chosen service provider. CEA refers to the ability of an end user customer to dial the number 1 plus the 10 digit telephone number to select the provider of that customer's long distance service. (See Aff. of Mark Shlanta, ¶2) In this instance the calls would necessarily be dialed by the calling party located in South Dakota as 1-605-NXX-XXXX.

7. Switched Transport provides for the origination and termination of traffic between PTC's or other Exchange Telephone Company facilities to SDN's centralized equal access tandem. (SDN Tariff, Section 1.2). Switched Transport is provided by SDN at its access tandem. (SDN Tariff, Section 5.1). SDN provides equal access and switched transport services to IXC's, which allows the IXC's to access the LEC's that subtend SDN's Access Tandem. SDN charges centralized equal access switching and transport fees to IXC's for the tandem switched access services it provides, the provision and pricing of which services are governed by SDN's federal and state tariffs. (See Aff. of Mark Shlanta, ¶ 3; SDN Tariff)

8. As a common carrier and provider of access tandem services, SDN's Sioux Falls access tandem is designated as such in the Local Exchange Route Guide (LERG) and accordingly provides tandem functionality to any participating carrier (LEC and/or CLEC) that chooses to utilize its services for purposes of exchanging traffic with interconnected long distance carriers. (See Aff. of Mark Shlanta, ¶ 4)

9. 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, including centralized equal access tandem switching and switched transport services from SDN. (See Sprint's Answer and Counterclaim, ¶ 9 and 30; SDN's Amended Answer, ¶ 5)

10. Sprint, as an IXC, ordered CEA services pursuant to the SDN intrastate tariff to originate and terminate long distance or toll calls from its customers that are either served on an originating basis from LEC's that use the SDN CEA service to connect with IXC's or seek to complete calls to numbers served by those same LEC's. SDN as the CEA

provider, supplied the originating and terminating CEA services provided for under its tariff and accordingly, charged Sprint for intrastate CEA charges. (See Aff. of Mark Shlanta, ¶ 5; Amended Complaint, ¶ 5)

11. SDN sent a monthly invoice to Sprint for these CEA charges for many years. SDN charged the amounts authorized in its intrastate access tariff for CEA service. Sprint paid these invoices in full and without protest until April of 2009. (See Aff of Mark Shlanta, ¶ 6; Amended Complaint, ¶ 6 and 7)

12. With regard to SDN's May 2009 invoice for April services, Sprint disputed the portion of the traffic it claimed was "stimulated" or "pumped" traffic. Sprint provided SDN with a breakdown of what it refers to as "undisputed" and "disputed" portions of the SDN invoices. The disputed portion of the invoices purports to be related to traffic Sprint identifies as "pumped" traffic that Sprint alleges is stimulated by illegal activities of the LEC to which the traffic is terminated. The undisputed portion of the invoices is for what Sprint characterizes as "unpumped" traffic. Sprint has arbitrarily segregated the traffic as "pumped" and "unpumped" without providing the appropriate call detail records to verify the classification, despite requests from SDN.¹ (Counterclaim, ¶ 41; Aff. of Mark Shlanta, ¶7)

13. In addition to disputing a portion of SDN's current billing for April 2009 CEA services, Sprint's dispute notice also attempted to dispute past invoices, i.e. from June 2007 through April 2009, by requesting a refund from SDN for payments Sprint made to SDN for traffic delivered from Sprint, through SDN, to Sancom, Splitrock, Northern

¹ For purposes of SDN's Amended Motion for Partial Summary Judgment, SDN is not disputing the classification of the traffic by Sprint and is relying on Sprint's classification as to whether the traffic is "pumped" or "unpumped" for billing purposes only.

Valley, and Capital. (Amended Complaint, ¶ 15 and 16; Counterclaim of Sprint ¶ 16 and 40)

14. The traffic was delivered to SDN via Feature Group D (FGD) access services ordered by Sprint. FGD service establishes the connection path between an IXC and the SDN tandem switch, and in this case, was ordered by Sprint pursuant to SDN's tariff (SDN Tariff, Section 5.2; Aff. of Mark Shlanta, ¶ 8)

15. All of the traffic in question traversed FGD facilities and was switched through SDN's CEA tandem switch. (See Aff. of Mark Shlanta, ¶ 10)

16. Since May of 2009 Sprint has paid for neither the disputed nor the undisputed traffic because Sprint claims authority to offset earlier payments it made to SDN (June 2007 to April 2009) by withholding payment of current undisputed charges. (See Sprint's Counterclaim, ¶ 40)

17. Sprint delivers the terminating traffic to the SDN CEA tandem switch, representing to SDN that it is switched access traffic as defined by SDN's Tariff to be terminated to the LEC identified in the data flow (or signaling) that is inherent with each call. As a common carrier, SDN does not screen or otherwise analyze the nature of this traffic in the performance of its CEA functions; SDN is only aware at the time the traffic is delivered to SDN for transport to the terminating LEC that Sprint has sent this traffic using FGD services Sprint has ordered from SDN with call information sufficient for SDN to terminate the call to the appropriate LEC. SDN does not know why Sprint's end user chose to establish this communication. (See Aff. of Mark Shlanta, ¶ 12)

18. SDN provides only CEA services for traffic presented by Sprint as access traffic. (See Aff. of Mark Shlanta, ¶ 12). SDN cannot block, reroute or otherwise alter the transmission of traffic submitted by Sprint to the SDN tandem using FGD service.

19. Pursuant to its tariff, SDN made demand for the total amount of the invoices. SDN has also repeatedly demanded immediate payment of the undisputed portion of the invoices. (See Aff. of Mark Shlanta, ¶13)

20. Sprint has refused to pay not only the disputed portion of the invoices, related to alleged “pumped traffic”, but also the undisputed portion of the invoices, related to “unpumped traffic”. (See Sprint’s Counterclaim, ¶ 40 and 41)

21. Instead of paying the undisputed portion of each invoice and “following payment” asserting its claim, as required by the tariff (SDN Tariff, Section 2.4.1(B)(2)), and as demanded by SDN, Sprint has engaged in an unauthorized and illegal self-help “accounting mechanism” whereby Sprint applies the undisputed portion of the current invoices as a “credit” to the disputed portion of the invoices, including the back claim amount. (See Sprint’s Counterclaim, ¶ 40-41, Amended Complaint, ¶ 16)

22. Sprint has not made any payments to SDN since April of 2009, although it continues to use SDN’s CEA services each month regardless of Sprint’s classification of the nature of the traffic. (See Aff. Mark Shlanta, ¶ 13)

23. As of Spetember 1, 2011 Sprint owed SDN a total of \$941,009.42 for CEA charges for intrastate minutes of use, exluding late charges, and this amount grows on a monthly basis.²

² As of September 1, 2011, Sprint owes SDN \$4,602,511,52 total on all unpaid invoices dated May 1, 2009 through September 1, 2011, which amount includes both interstate and intrastate charges and late charges authorized by SDN’s tariff (SDN Tariff, Section 2.4.1).

24. 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. Following payment of the undisputed amounts, efforts to resolve the complaint . . . of the disputed bill . . . shall continue." (SDN Tariff, Section 2.4.1(B)(2))

25. SDN has contacted Sprint and demanded payment of the invoices, but Sprint continues to refuse to pay for even the undisputed portion of the invoices. (See Aff. Mark Shlanta, ¶13), yet seeks to assert a claim regarding the disputed portions.

DATED this 23rd day of September, 2010.

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