

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	NORTHERN VALLEY COMMUNICATIONS, L.L.C.'S COUNTERCLAIM AGAINST SPRINT COMMUNICATIONS COMPANY, LP

Northern Valley Communications, L.L.C. ("Northern Valley"), for its counterclaim against Sprint Communications Company LP ("Sprint"), states and alleges as follows:

NATURE OF THE CASE

1. Northern Valley brings this counterclaim against Sprint for a declaratory judgment regarding Sprint's refusal to pay Northern Valley amounts due for originating and terminating telephone access services to Northern Valley's customers that provide conference-calling services. Northern Valley asks (1) that the Commission declare Northern Valley's intrastate access tariff applies to the traffic terminating to conference-call providers served by Northern Valley, or (2) in the event the Commission determines Northern Valley's intrastate tariff does not apply, that the Commission declare that Northern Valley is nevertheless entitled to reasonable compensation for the services it has provided to Sprint in terminating Sprint's intrastate long-distance traffic, and Northern Valley further requests that the Commission declare a reasonable rate for the services provided to Sprint, which may include, but is not necessarily limited to, the rate contained in Northern Valley's intrastate access tariff.

THE PARTIES

2. Northern Valley Communications, L.L.C., 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 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 counterclaim pursuant to SDCL 15-6-13 (SD Rules of Civil Procedure for Counterclaims), SDCL 15-6-57 (SD Rules of Civil Procedure for Declaratory Judgments), SDCL 49-13-1 (Complaints before the Commission), SDCL 49-13-13 (Commission authority to "prescribe the just and reasonable charge"), SDCL 1-26-15 (Agency authority to issue declaratory rulings), ARSD 20:10:01:01.02 (Commission use of SD Rules of Civil Procedure), and ARSD 20:10:01:34 (Commission rule for petitions for declaratory ruling).

FACTUAL ALLEGATIONS

5. Northern Valley is a competitive local exchange carrier ("CLEC") serving business and residential customers in Aberdeen, Groton, Redfield and surrounding areas of South Dakota.

6. Sprint is an interexchange ("IXC," or "long-distance carrier") carrier that provides long-distance service.

7. As an IXC, Sprint provides long-distance phone service to its customers throughout the country. To do so, Sprint uses, *inter alia*, phone lines owned by LECs.

8. When a Sprint long-distance customer places a long-distance call to South Dakota, Sprint typically must use the facilities of a LEC in South Dakota to complete the call.

9. IXC's like Sprint pay "originating" Switched Access Charges to the LECs that serve customers who initiate calls within their local calling area, and "terminating" Switched Access Charges to the LECs that serve customers who receive long-distance calls within the LEC's local calling area.

10. The rate for the Switched Access Charge is established in tariffs that the LEC has filed with the FCC (for interstate long-distance calls) and state public utility commissions (for intrastate long-distance calls).

11. The rates for Northern Valley's Switched Access Service are prescribed in tariffs filed with the FCC (for interstate long-distance calls) and South Dakota Public Utility Commission (for intrastate long-distance calls).

12. Sprint utilized, and continues to utilize, the originating and terminating access services provided by Northern Valley; without Northern Valley's services, Sprint's customers' call could not be completed.

13. Northern Valley has billed Defendant Sprint for intrastate Switched Access Service charges in accordance with its intrastate tariff. Sprint, however, refuses to pay Northern Valley's invoices with regard to any traffic terminating to conference-call providers.

Sprint's excuse for not paying hinges on Sprint's claim that the relationship between Northern Valley and conference-calling companies is governed by Northern Valley's interstate or intrastate access tariff. Sprint claims that, under those tariffs, conference-calling companies are not "customers" or "end users" and that, as a result, Northern Valley is not entitled to payment of access charges.

14. Sprint's analysis ignores South Dakota law, which governs the relationship between a South Dakota LEC and its end user customer. In South Dakota, the local exchange services of small independent telephone companies, such as Northern Valley, have been deregulated and these carriers are not required to file a tariff for local exchange service. *See* SDCL § 49-31-5.1 and SDCL § 49-31-12.2.

15. Indeed, in South Dakota, "no rate of return or price regulation" applies to fully competitive services. *See* SDCL § 49-31-4. Since 2003, local exchange services have been deemed to be "fully competitive." *See In the Matter of the Application of Qwest Corporation to Reclassify Local Exchange Services as Fully Competitive*, TC 03-357, Order Reclassifying Qwest's Local Exchange Services as Fully Competitive; Order Approving Settlement Agreement; Notice of Entry (October 29, 2003).

16. Furthermore, state law clearly permits local exchange carriers, such as Northern Valley, to offer whatever terms of service it chooses to its local customers, especially higher volume customers, including conference-calling providers. It provides:

SDCL § 49-31-84 Telecommunication companies may grant incentives to meet competition.

It is in the public interest and essential that local exchange telecommunication companies over all of South Dakota continue to be viable providers of affordable local exchange services. Local exchange telecommunication companies receive substantial revenue necessary to support the exchange from a minority of their customers. Local exchange telecommunication companies must be allowed to compete to keep their profitable customers in order to maintain the viability of local exchanges. However, customers in rural and high-cost areas shall have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Notwithstanding any other provisions of chapter 49-31, any telecommunication company may grant any discounts, incentives, services, or other business practices necessary to meet competition.

17. Northern Valley, pursuant to SDCL 49-31-84 and the other applicable provisions of state law, has entered into individual contracts with its conference-calling providers that define the terms of local service.

18. Sprint has an unpaid balance for intrastate traffic related to calls that Sprint's customers' made to Northern Valley's customers providing conference-calling services. Sprint has also accrued and continues to accrue late fees on the unpaid intrastate balance.

19. Sprint's ability to send calls to and receive calls from the residences and businesses connected to Northern Valley's network is a valuable service that enriches Sprint. Because of Northern Valley's service, Sprint is able to bill its long-distance customers for long-distance services, and receive payment from those customers.

20. Northern Valley has always expected to be compensated for the work it does, which enables Sprint to send and receive these calls. Northern Valley has demonstrated this expectation by, *inter alia*, preparing and sending invoices to Sprint on a monthly basis and by pursuing collection actions in federal court against Sprint.

21. Sprint has always known of Northern Valley's expectation of compensation and has continued to send traffic to Northern Valley's network.

22. Sprint would be unjustly enriched if it is not required to pay Northern Valley for the use of its network.

COUNT I
DECLARATORY JUDGMENT - TARIFF APPLICATION

Northern Valley requests that the Commission enter a declaratory judgment against Sprint as follows:

1. That South Dakota law, specifically SDCL §§ 49-31-4, 49-31-5.1, 49-31-12.2 and 49-31-84 permits Northern Valley to enter into individual-case-basis contracts with conference-calling providers and that these contracts, rather than Northern Valley's interstate or intrastate access tariffs, establish an end user relationship with these customers of Northern Valley.
2. That Northern Valley provides tariffed intrastate access services to Sprint and that the rate in Northern Valley's intrastate tariff applies to the intrastate long-distant traffic terminating to Northern Valley's conference-call providers.
3. That Sprint's actions constitute an unjust and unreasonable practice.

COUNT II
DECLARATORY JUDGMENT - IF TARIFF DOES NOT APPLY

In the event the Commission determines that the rate in Northern Valley's intrastate tariff does not apply, Northern Valley requests that the Commission enter a declaratory judgment against Sprint as follows:

1. Declare that Northern Valley is nevertheless entitled to reasonable compensation.
2. Declare a reasonable rate for the access services provided by Northern Valley for intrastate long-distance traffic terminating to conference-call providers, which reasonable rate may be Northern Valley's intrastate tariffed access rate.
3. That Sprint's actions constitute an unjust and unreasonable practice.

PRAYER FOR RELIEF

For the foregoing reasons, Northern Valley requests relief as follows:

1. For a declaratory judgment as set for in Count I or, in the alternative, Count II hereof;
2. For Northern Valley's costs, disbursements and attorney fees; and
3. Such other and further relief as the Commission deems just and reasonable.

Dated: October 7, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 7th day of October 2011 upon the following:

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