

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 L.P.	DOCKET TC09-098
IN THE MATTER OF THE THIRD PARTY COMPLAINT OF SPRINT COMMUNICATIONS COMPANY L.P. AGAINST SPLITROCK PROPERTIES, INC., NORTHERN VALLEY COMMUNICATIONS L.L.C., SANCOM, INC. AND CAPITAL TELEPHONE COMPANY	NORTHERN VALLEY COMMUNICATIONS, L.L.C.'S MOTION FOR LEAVE TO FILE COUNTERCLAIMS

Northern Valley Communications, L.L.C. ("Northern Valley"), by and through counsel, and pursuant to SDCL § 15-6-15(a) and ARSD 20:10:01:16, hereby respectfully requests the South Dakota Public Utilities Commission (the "Commission") grant it leave to file counterclaims against Sprint Communications Company L.P. ("Sprint").¹

As explained more fully in Northern Valley's Opposition to Sprint's Motion to Dismiss, South Dakota law provides that leave to file an amendment to a pleading, such as Northern Valley's counterclaims, "shall be freely given when justice so requires." SDCL § 15-6-15(a) Here, justice requires that the Commission allow Northern Valley to bring its counterclaims requesting declaratory relief because those counterclaims are directly related to, and tend to undermine, Sprint's claims against Northern Valley. Indeed, without its counterclaims, Northern Valley will be forced to participate in a one-sided proceeding where the Commission is only presented with one side of the relevant events — Sprint's.

Moreover, leave should be granted to Northern Valley because no harm will accrue to

¹ Northern Valley filed its Counterclaims with the Commission on October 7, 2011.

Sprint by allowing Northern Valley's declaratory claims to remain. *See Isakson v. Parris*, 526 NW2d 733, 737-38 (SD 1995) ("the most important consideration in determining whether a party should be allowed to amend a pleading is whether the nonmoving party will be prejudiced by the amendment"). Sprint is not prejudiced because it can claim no surprise regarding Northern Valley's intent to pursue these claims. *Id.* at 738 (amendments to pleadings are especially appropriate "when the opponent could not claim surprise, but effectively should have recognized that the new matter included in the amendment would be at issue." (citing 6 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1487 (1990))).

Indeed, Northern Valley included similar claims in its initial Answer, but sought monetary damages on those claims, which caused the PUC to dismiss based on the election of remedies statute. *See In the Matter of South Dakota Network, LLC against Sprint Communications Company L.P.*, Docket TC09-098, Order Granting Motion to Dismiss Cross-Claims (Sep. 15, 2011). During the course of the hearing on these matters, it was discussed repeatedly and at length that Northern Valley would lodge these counterclaims again as declaratory claims, eliminating the request for monetary damages that caused the dismissal. *See In the Matter of South Dakota Network, LLC against Sprint Communications Company L.P.*, Docket TC09-098, Ad Hoc Committee Meeting (Aug. 30, 2011)

Finally, contrary to Sprint's characterization that "this case is rapidly proceeding towards completion," Sprint Motion to Dismiss at 2, it has failed to demonstrate that any harm will accrue as a result of having these claims adjudicated in this case. Sprint's witnesses have yet to be deposed and Sprint has already agreed with South Dakota Networks that those depositions can be delayed until after the Commission resolves the pending motions. Thus, there is still ample time for Sprint to produce relevant documents and evidence before depositions. And, as such,

any modification to the current procedural schedule that may be required would more than likely happen anyway as a result of the agreement between Sprint and SDN to delay depositions.

Absent a demonstration of harm to Sprint, there is no basis to refuse to allow Northern Valley to file the amended counterclaims. Indeed, justice would require the direct opposite result. The Commission should accordingly grant Northern Valley leave to file its counterclaims in this case.

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James M. Cremer

James M. Cremer
BANTZ, GOSCH & CREMER, L.L.C.
305 Sixth Avenue SE; P.O. Box 970
Aberdeen, SD 57402-0970
605-225-2232; 605-225-2497 (fax)
jcremer@bantzlaw.com

Ross A. Buntrock (*pro hac vice*)
G. David Carter (*pro hac vice*)
ARENT FOX LLP
1050 Connecticut Avenue NW
Washington, DC 20036-5339
202-775-5734; 202-775-6395 (fax)
buntrock.ross@arentfox.com
carter.david@arentfox.com

Counsel for Northern Valley Communications, L.L.C.

CERTIFICATE OF SERVICE

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

Ms. Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue, 1st Floor
Pierre, SD 57501-5070
605-773-3201; 866-757-6031 (fax)
patty.vangerpen@state.sd.us

Ms. Bobbi Bourk
Staff Analyst
SD Public Utilities Commission
500 East Capitol Avenue, 1st Floor
Pierre, SD 57501-5070
605-773-3201; 866-757-6031 (fax)
bobbi.bourk@state.sd.us

Ms. Margo D. Northrup
Attorney at Law
Riter Rogers Wattier & Northrup LLP
P.O. Box 280
Pierre, SD 57501-0280
605-224-5825; 605-224-7102 (fax)
m.northrup@riterlaw.com

Mr. Talbot Wiczorek
Attorney at Law
Gunderson Palmer Nelson & Ashmore LLP
P.O. Box 8045
Rapid City, SD 57709-8045
605-342-1078; 605-342-0480 (fax)
tjw@gpnlaw.com

Mr. Jeffrey D. Larson
Attorney at Law
Larson & Nipe
P.O. Box 277
Woonsocket, SD 57385-0277
605-796-4245; 605-796-4227 (fax)
jdlarson@santel.net

Ms. Karen E. Cremer
Staff Attorney
SD Public Utilities Commission
500 East Capitol Avenue, 1st Floor
Pierre, SD 57501-5070
605-773-3201; 866-757-6031 (fax)
karen.cremer@state.sd.us

Ms. Darla Pollman Rogers
Attorney at Law
Riter Rogers Wattier & Northrup LLP
P.O. Box 280
Pierre, SD 57501-0280
605-224-5825; 605-224-7102 (fax)
dprogers@riterlaw.com

Mr. William P. Heaston
Director, Business Development
SDN Communications
2900 W. 10th Street
Sioux Falls, SD 57104-2543
605-978-3596
bill.heaston@sdncommunications.com

Mr. Philip R. Schenkenberg
Briggs and Morgan, P.A.
80 South Eighth Street
2200 IDS Center
Minneapolis, MN 55402
612-977-8400; 612-977-8650 (fax)
pschenkenberg@briggs.com

James M. Cremer

BANTZ, GOSCH & CREMER, L.L.C.
Attorneys for Northern Valley Communications, L.L.C.
305 Sixth Avenue SE; P.O. Box 970
Aberdeen, SD 57402-0970
605-225-2232; 605-225-2497 (fax)
jcremer@bantzlaw.com