

**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 NUMBER TC 09-098
)	
IN THE MATTER OF THE THIRD)	
PARTY COMPLAINT OF SPRINT)	
COMMUNICATIONS COMPANY LP)	
AGAINST SPLITROCK PROPERTIES,)	
INC., NORTHERN VALLEY)	
COMMUNICATIONS, INC.,)	
NORTHERN VALLEY, INC., AND)	
CAPITAL TELEPHONE)	
COMPANY)	

**NORTHERN VALLEY COMMUNICATIONS, L.L.C.'S
MOTION FOR LEAVE TO FILE AMENDED 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 amended counterclaims against Sprint Communications Company, LP ("Sprint"). A redlined version of the Amended Counterclaim is attached hereto.

The amended counterclaims assert an additional claim against Sprint for its ongoing refusal to pay the undisputed intrastate access charges relating to Northern Valley's traditional residential and business customers. Sprint's refusal to pay stems from its earlier "offsetting," as a self help mechanism, to recoup amounts it contends to have improperly paid Northern Valley for conference-calling traffic. Because Sprint's actions have already been declared improper by this Commission,¹ Northern Valley sought to collect the hundreds of thousands of dollars, which it is

¹ See *In the Matter of the Complaint Filed by South Dakota Network, LLC against Sprint Communications Company LP Regarding Failure to Pay Intrastate Equal Access Charges and to Immediately Pay Undisputed*

due, without further intervention of the Commission.² Having failed to gain Sprint's voluntary compliance, Northern Valley is compelled to seek leave to amend its counterclaims, and also concurrently files a motion for partial summary judgment for these amounts.

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 amend its counterclaims requesting declaratory relief because the additional counterclaim seeks to confirm that Sprint is obligated to pay Northern Valley amounts for undisputed intrastate access charges.

Earlier this year, the Commission granted summary judgment in favor of South Dakota Networks and against Sprint. *See SDN Partial Summary Judgment Order*. There, Sprint had disputed only a portion of the invoices sent to it by SDN and attempted to retroactively dispute past invoices. *Id.* at 3. Sprint demanded a refund of past payments and created a debit balance on the account. *Id.* at 3. The Commission determined that "Sprint's practice of offsetting prior payments with undisputed portions of the bills" was improper. *SDN Partial Summary Judgment Order* at 4.

Despite this ruling, Sprint continues to withhold over \$400,000 from Northern Valley in intrastate access charges which it has never disputed are owed to Northern Valley. As this Commission has already rejected Sprint's AP debit balance theory, justice requires that Northern Valley be afforded an opportunity to amend its counterclaims against Sprint so that the

Portions of SDN's Invoices, Order Granting Partial Summary Judgment; Order Granting Leave to File Counterclaims; Order Denying Dismissal of Counterclaim, TC09-098 (SDPUC Jan. 18, 2012) ("*SDN Partial Summary Judgment Order*").

² As set forth in the accompanying statement of undisputed facts in support of the motion for partial summary judgment, Sprint currently owes \$462,026 in intrastate access charges related to long-distance traffic terminating to or originating from Northern Valley's traditional residential and business customers and \$254,379 in interest on this unpaid balance.

Commission may enforce the policy articulated in the *SDN Partial Summary Judgment Order* with regard to the amounts improperly withheld from Northern Valley.

Dated: July 11, 2012

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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 11th day of July 2012 upon the following:

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