

**EXHIBIT D**  
**PUBLIC VERSION**

# Arent Fox

November 7, 2011

**VIA EMAIL**

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**G. David Carter**

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**Re: In the Matter of Complaint of South Dakota Network, LLC Against Sprint Communications Company, LP, TC 09-098: Sprint's Discovery Responses**

Dear Phil:

As conveyed in my email of November 1, 2011, and our telephone conversation of November 3, 2011, Northern Valley desires to work expeditiously towards the resolution of open discovery issues so that this case can proceed to final resolution. Towards that end, I have requested that, rather than awaiting resolution of Northern Valley's declaratory judgment claims, we proceed to meet and confer regarding any discovery disputes that would remain without regard to the outcome of the pending motion to dismiss. In this manner, we can get any unresolved issues presented to the Commission as soon as possible.

Accordingly, as requested by your email of November 2, 2011, below are the issues that I would like to discuss during a meet and confer. Please let me know when we can schedule such a call during the early part of next week.

**Interrogatories:**

**1 and 2:** Sprint's original objection to these requests was based in part on the fact that they were premature. Sprint has obtained significant discovery from Northern Valley, including conducting fact depositions. Northern Valley does not believe that Sprint can refuse to provide a substantive response until it serves opening testimony because this deprives Northern Valley of a reasonable opportunity to understand and test Sprint's arguments during fact discovery. Does Sprint intend to amend its response?

**3:** Northern Valley will consider withdrawing this request in light of the Commission's agreement that Sprint must produce unredacted versions of spreadsheets that will likely provide this information. A final decision will be made once Northern Valley has received those documents. When can we expect them?

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**4:** Northern Valley disagrees that this information requested lacks relevance simply because the LEC is outside of the state of South Dakota. Will Sprint revise its answer to respond to the question as written?

**7:** Northern Valley disagrees that the requested information is solely relevant to Northern Valley's unjust enrichment claim in federal court. The information is relevant to Northern Valley's declaratory judgment claims in this case, and is also relevant to the evaluation that the Commission is required to do under SDCL § 49-13-13 if it concludes that Northern Valley's tariff does not apply. Sprint's assertions of burden are neither specific nor supported and thus waived. Nevertheless, Northern Valley is willing to consider sampling protocols or other methodologies that may reduce any perceived burden on Sprint. Will you propose such a protocol or provide detailed information about what data is maintained by Sprint to enable a productive discussion?

**8:** Again, as discussed above, we believe that this information is relevant to more than just Northern Valley's unjust enrichment claims in federal court. We are glad to discuss any perceived ambiguity, but believe the intent of this interrogatory is easily discernable. Accordingly, and in light of the fact that there is no burdensome objection, will you provide a substantive response?

**9:** To the extent that Sprint has made representations to its wholesale customers regarding price increases for delivering traffic to Northern Valley, we believe that those representations are relevant and discoverable. We are glad to discuss any perceived ambiguity, but believe the intent of this interrogatory is easily discernable.

**10:** Please confirm Sprint's representation that only Julie Walker, Regina Roach, and Amy Clouser have any personal knowledge regarding Sprint's investigation and determination to stop paying Northern Valley. This seems highly implausible. Also, Sprint has offered no explanation as to why it has failed to disclose any oral communications between these individuals.

**11:** This interrogatory asked Sprint to provide numbers on a monthly basis. I would like to discuss why you refuse to provide that information for the period discussed in your first numbered paragraph. With regard to the second numbered paragraph of your response, if Sprint agrees to the accuracy of the traffic separation set forth in the invoices during that time period, it needs to make that agreement explicit. If it does not agree, it needs to make that clear, as well as the basis for any such disagreement.

**12:** If Sprint provides service to a company that it considers to be a "Calling Service Providers" then the information is relevant as an admission against interest. If Sprint does not provide such service, then Sprint should have no problem making that representation under oath.

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**13:** Northern Valley renews its request to be informed in advance of any expert witness that Sprint intends to present pre-filed testimony. If Sprint refuses to comply with this request, Northern Valley reserves its right to seek to have any such witness blocked from testifying.

### **Document Requests:**

**1:** Northern Valley disagrees that this request is solely related to its unjust enrichment claim in federal court. Are the documents Sprint has produced to date all of the documents responsive to this request?

**3:** Sprint states that it has not relied upon any documents save the traffic study it has produced. Is this still the case? If not, please update your response. Also, please identify by Bates stamp number which documents relate to the traffic study referenced in your current response, and please identify the people who have performed these studies.

- Are SPRNV000087 and SPRNV000199 these traffic studies? If so, who are the custodians for these documents? Sprint has failed to produce metadata for these documents.

**5:** Sprint objects and produces no documents relating to its affirmative defense. How can it be that Sprint's own affirmative defenses are irrelevant? If you intend to maintain such a defense, then you need to say whether documents exist to support it.

**8:** Sprint states that it will produce its dispute notices sent to SDN that relate to traffic delivered by SDN to NV. We assume that Sprint has produced these documents to South Dakota Network. Please confirm that you've done so.

**13:** Sprint objects on the grounds that this request is not limited to the state of South Dakota. Northern Valley disagrees. The question solely relates to Northern Valley and its right to collect access charges. Northern Valley only operates in South Dakota necessarily making the request limited to South Dakota. In any event, are there any documents that Sprint is refusing to produce based upon that particular objection? If so, Northern Valley believes that Sprint needs to produce any such relevant documentation.

**14:** Northern Valley disagrees that documents relating to contracts or agreements Sprint has with other entities is irrelevant. If Sprint has such agreements, then the documents are relevant as an admission against interest. If Sprint does not have such documents, Sprint should have no problem making that representation in its answer to the request.

**15:** Same as document request No. 14. Northern Valley disagrees that this request is irrelevant or otherwise unduly burdensome. If Sprint has responsive documents, then the

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documents are relevant as an admission against interest. Sprint's payment of access service charges for calls delivered to CSPs is directly relevant to the claims in this proceeding that such traffic is not access traffic or otherwise subject to access charges or compensable. If Sprint does not have such documents, Sprint should have no problem making that representation in its answer to the request. Moreover, Sprint's objection that this request is somehow related to Northern Valley's Tariff No. 3 is misplaced. The request specifically relates to Sprint's actions and not to Northern Valley.

**16:** Northern Valley disagrees that this request is solely related to its unjust enrichment claim in federal court. Information regarding Sprint's own practices regarding fee sharing arrangements tends to undermine Sprint's position that such arrangements are a basis for withholding payment. It is an admission against interest. I also note that Qwest has produced similar materials in the other cases.

**18:** Northern Valley disagrees with Sprint's blanket objection to this request. It is a simple request: does Sprint have documents that relate to analysis or cost projections for access charges? Such documents are imminently relevant to the issues in this case. Does Sprint have such cost projections or not? If so, it needs to produce them; if not, then say so as part of your response to the request.

**20:** Sprint has produced some documents related to this request. Please confirm, however, that Sprint has no other documents related to its request for damages that it intends to rely upon.

**23:** Northern Valley disagrees that this request is solely related to its unjust enrichment claim. To the extent that Sprint has documents relating representations it has made to its wholesale customers regarding price increases for delivering traffic to Northern Valley, we believe those documents are relevant and discoverable. We can discuss any perceived ambiguity, but the intent of the request is easily discernible.

**26:** Northern Valley again disagrees that this request is solely related to an unjust enrichment claim. The information is relevant to Northern Valley's declaratory judgment claims in this case, and is also relevant to the evaluation that the Commission is required to do under SDCL § 49-13-13 if it concludes that Northern Valley's tariff does not apply. Sprint's assertions of burden are neither specific nor supported and thus waived. Nevertheless, Northern Valley is willing to consider sampling protocols or other methodologies that may reduce any perceived burden on Sprint. Will you propose such a protocol or provide detailed information about what data is maintained by Sprint to enable a productive discussion?

**34:** Northern Valley disagrees that the phrase "revenue sharing agreements" is vague or ambiguous and that Sprint is unclear as to the phrase's intent. Sprint has discussed at length in legal briefs filed in several different forums its understanding of the phrase. Northern Valley

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also disagrees that this request is solely related to an unjust enrichment claim. In fact, it goes to the question of whether Sprint itself recognizes that such agreements are valid and do not provide a basis for refusing payment for services provided. Will Sprint produce relevant materials?

**35 and 36:** Again, these requests are not solely related to a claim for unjust enrichment. The information is relevant to the evaluation that the Commission is required to do under SDCL § 49-13-13 if it concludes that Northern Valley's tariff does not apply. Sprint's assertions of burden are neither specific nor supported and thus waived. Nevertheless, Northern Valley is willing to consider sampling protocols or other methodologies that may reduce any perceived burden on Sprint.

Thank you for your attention to this matter. I look forward to trying to work through these issues in a productive manner so as to minimize the need to burden the Commission with further briefing.

Sincerely,

A handwritten signature in blue ink that reads "G. David Carter". The signature is written in a cursive, flowing style.

G. David Carter