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January 24, 2012

VIA EMAIL and U.S. MAIL

Darla Pollman Rogers
Riter, Rogers, Wattier & Northrup
P.O. Box 280
Pierre, SD 57501

Re: Sprint's Intervention in SDN's Application for Waiver of Switched Access Cost
TC11-069
GPNA File No. 08509.0016

Dear Ms. Rogers:

I had a chance to thoroughly review your responses to discovery delivered to me by email on January 4, 2012. I reviewed the discovery with my client and find the responses incomplete and various objections lacking merit. Therefore, this letter is being provided to you to set forth my clients concerns with the discovery responses and to serve as a good faith attempt under SDCL 15-6-37(a)(2) to resolve these matters before pursuing a Motion to Compel.

In the first interrogatory that appears to be incomplete and the lack of supportable objection is Interrogatory 2. That Interrogatory and responses went as follows:

Interrogatory No. 2. In the Application for Waiver of Switched Access Cost Study ("Application"), paragraph 3(3), you state, "Preliminary analysis indicates that a cost study would support higher rates." Identify the following:

- a) Who performed the preliminary analysis;
- b) List of all materials relied upon for the preliminary analysis;
- c) All conclusions reached in the preliminary analysis; and
- d) All documents produced as part of the preliminary analysis.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is proprietary in nature and cannot be adequately protected by a Protection Order.

EXHIBIT 3

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

January 24, 2012

Page - 2 -

RESPONSE: Without waiving said objection, Consortia Consulting prepared the preliminary analysis. See Response to Staff's Data Requests and Response to Staff's Data Requests (Second Set).

As the Interrogatory clearly only seeks identification of information relied upon in the analysis and conclusions reached, your two objections that the interrogatory is overly broad and unduly burdensome and the objection that it is not reasonably calculated to lead to the discovery of admissible evidence are clearly unfounded. SDN had prepared the preliminary analysis and as stated in SDN's own petition, is using the preliminary analysis as grounds to avoid undertaking a cost study required pursuant to South Dakota law. You have only responded to subpart (a) of the Interrogatory. Knowing what materials were reviewed to arrive at the conclusions of the preliminary analysis, the conclusions reached in the preliminary analysis and any documents produced as part of the preliminary analysis are certainly reasonably calculated to lead to discovery of admissible evidence and in fact, are likely admissible. You have relied upon the preliminary analysis to avoid the duty to produce a cost study. To say the preliminary analysis now does not lead to discovery of admissible evidence is not a legitimate objection. Further, given that the preliminary analysis was done for this specific purpose, to avoid the cost study, the request for this information can hardly said to be overly broad and unduly burdensome.

The materials relied upon for the preliminary analysis could be clearly provided by Consortia Consulting, who you have identified as performing the analysis. The conclusions reached can easily be provided by Consortia and the documents produced as part of the preliminary analysis should be readily available by Consortia.

You have also stated the information cannot be adequately protected by the Protection Order you agreed to and we agreed to have the South Dakota Public Utilities Commission enter. The process of using these protective orders have been followed for the last several years in cases that you and I have been involved. To know say that information is too proprietary and it cannot be produced even though there is a protective order in place shocks me.

In any case, a claim that information is proprietary is not an objection to discovery. It is your obligation, if you believe the information is proprietary and cannot be protected by the existing protection order, to seek a protective order under SDCL 15-6-26(c). You have not done so, therefore, you must produce the information.

Interrogatory No. 3. Identify all services SDN provides that are not subject to tariff and, for each such service, identify and explain any preliminary cost analysis performed with respect to each such service, including but not limited to expenses allocated and how the allocation was calculated for each such service.

OBJECTION: SDN objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence.

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

January 24, 2012

Page - 3 -

RESPONSE: Without waiving said objection, many of SDN's services are listed on its website at www.sdncommunications.com.

You have objected to this interrogatory as not reasonably calculated to the discovery of admissible evidence. The interrogatory sought information explaining how a preliminary cost analysis was performed with respect to services that are non-tariff and how expenses were allocated. This is basic information in determining how costs are allocated by a company and what tariff costs are appropriate. Your pleadings allege that no meaningful benefit can be derived by the consumers of SDN's services by a cost study. To reach this conclusion, there must be some basic review of non-tariff services and allocation of costs. If SDN did not do any of this, this information would be relevant as to whether a waiver is appropriate. If SDN performed any of these functions, the information is relevant as to whether a cost study may result in a benefit to SDN consumers.

Interrogatory No. 4. Identify the number of minutes of voice traffic SDN's network carried that were charged under a transiting agreement for each year from 2005 through 2011.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

The number of minutes for transiting agreements delivered by SDN is relevant to show whether there has been growth in this market. On information and if SDN has increased its transiting agreements the last several years the growth in those minutes is relevant when considering the allocation of cost.

Interrogatory No. 5. In the Application, paragraph 3(1), you state, "SDN does not have the internal experts necessary to determine cost-based intrastate access rates and would have to employ the services of outside consultants." Identify how SDN made a determination that external experts would be necessary to determine cost-based intrastate access rates, what SDN determined the services of such experts would cost, and identify all experts or consultants with whom SDN discussed the possibility of doing a study to determine cost-based intrastate access rates.

OBJECTION: SDN objects to the form of this interrogatory. SDN further objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, SDN consulted with Consortia Consulting regarding its Application for Waiver of Switched Access Cost Study. SDN does not have anyone on staff that can prepare a Cost Study. For purposes of this application, estimates of the cost to produce a Cost Study range from \$35,000.00 to \$50,000.00.

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

January 24, 2012

Page - 4 -

The objection to form is not generally a valid objection to interrogatories. Regarding whether the question is reasonably calculated to lead to the discovery of admissible evidence, given the fact that SDN has put at issue the cost of a cost study as grounds as to why it should not have to do one, the information is relevant. How it determined the cost of the cost study and what comparison it made with potential experts on what a cost study would entail is clearly relevant.

Interrogatory No. 6. Identify the total minutes of use for SDN services not subject to tariff for the years 2006 through 2010, and 2011 to date.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

The total number of minutes of use for SDN services not subject to tariff is certainly relevant to figure allocation of cost. Knowing the amount of traffic for non-tariff services versus tariff services is an integral part in determining allocation of cost. Thus, this information is clearly relevant and admissible.

Interrogatory No. 7. For each of the five most recent fiscal years, 2006 – 2010, and for 2011 to date, provide financial statements (Income, Cash Flow, and Balance Sheet, audited if available).

- a) Provide revenue information in sufficient detail to show all significant sources of revenue (e.g., local service, toll service, access, USF receipts, equipment, broadband, video, and wireless).
- b) Provide expense information in sufficient detail to show all significant expense categories (e.g., maintenance, interest, depreciation, marketing, legal, finance, and taxes).
- c) Provide investment information in sufficient detail to show all significant investment categories (e.g., interoffice, loop, switching, broadband, video, and wireless).

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is proprietary in nature and cannot be adequately protected by a Protection Order.

Interrogatory No. 7 calls for basic information for calculating cost studies and for separating cost and revenue for non-tariff services. In SDN's own response to Staff's Second Set of Data Requests number 2-2, SDN provided general information of the separation policies followed but no separation information. Certainly, this information is reasonably calculated to be admissible. Further, it appears SDN must have done this already, given your responses to Staff's Data Requests.

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

January 24, 2012

Page - 5 -

Regarding the statement that a Protection Order cannot adequately protect the information, see my explanation to your response to Interrogatory 2.

Interrogatory No. 8. For each of the past fiscal five years, 2006 – 2010, and for 2011 to date, provide the total minutes of use, by month, switched by SDN terminating to any LEC, by LEC and by interexchange carrier.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

The total minutes of use are relevant for any cost study. It seems highly unusual that SDN would not provide basic total minutes of use information to its experts for its preliminary analysis. This is information kept during the regular course of business and should not be overly burdensome to produce. Therefore, it should be produced.

Interrogatory No. 9. For each of the past fiscal five years, 2006 – 2010, and for 2011 to date, provide the total minutes of use, by month, switched by SDN ultimately terminating to Call Connection Companies, by Call Connection Company, by LEC, and by interexchange carrier.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

This information is relevant for the same reason as the information contained in interrogatory No. 8 is relevant. Furthermore, if there is a showing of substantial increase of traffic for call connection companies, this growth in traffic could have an impact on total minutes of use and costs that in turn could impact the tariff rates.

Interrogatory No. 10. Provide detailed cost and investment information on the switching equipment, and any other SDN-owned equipment, used to provide services ultimately terminating to Call Connection Companies; e.g., vendor invoice, vendor switch model, switch capacity.

OBJECTION: SDN objects to this interrogatory as it is not reasonable calculated to lead to the discovery of admissible evidence.

This information is directly relevant to perform any cost study or even perform a preliminary cost study. Therefore, the information is relevant for this action or to confirm your representations that a cost study would lead to higher rates and, therefore, should not be required.

Interrogatory No. 11. Provide a detailed diagram showing the call path through SDN-owned or controlled equipment for traffic ultimately terminating to Call Connection Company-owned conference bridge equipment.

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

January 24, 2012

Page - 6 -

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, a diagram that depicts a generic view of the transmission path and the rates that apply for switched access service can be found in SDN's Access Tariff at 5.6.1 (D) (1) (pg. 72) (See Exhibit A).

The generic view of the transmission path is unacceptable. The call path through SDN-owned or controlled equipment for traffic ultimately terminating to Call Connection Company-owned conference bridge equipment differs from the generic. Given Call Connection Company traffic has grown to a sizable portion of business for SDN, the information on path and equipment used is necessary to determine cost. If no diagram exists, SDN should provide a detailed explanation of the call path for calls ultimately destined for Call Connection Companies' conference bridge equipment, including identifying each and every part of SDN's network that is involved in completing such calls.

Interrogatory No. 12. Provide financial information on any reserves, write-offs, or uncollectibles associated with traffic ultimately delivered to Call Connection Companies.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is proprietary in nature and cannot be adequately protected by a Protection Order.

Certainly financial information write-offs are relevant in a cost study. As to your objection as to proprietary in nature, see the explanation regarding the information provided to Interrogatory No. 2.

REQUESTS FOR PRODUCTION

Request No. 1. Produce all documents reviewed in the preliminary analysis performed to indicate that the cost study would support higher rates; all documents discussing the conclusion; and all work papers or other documents produced or created as part of the preliminary analysis.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Without waiving said objection, See Response to Staff's Data Request and Response to Staff's Data Requests (Second Set).

Given that Request for Production No. 1 only looks for all documentation and work papers used as part of the preliminary analysis, I am at a loss to understand how the interrogatory is overly broad or unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. SDN has relied on this preliminary cost study analysis. Certainly, all information used in doing this preliminary cost study is relevant and discoverable.

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

January 24, 2012

Page - 7 -

Request No. 2. With respect to all experts or outside consultants whose services you considered retaining or employing, produce all information received or exchanged with such experts or outside consultants pertaining to developing cost-based intrastate access rates.

OBJECTION: SDN objects to this interrogatory as it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested by the attorney work product doctrine as it is work produce prepared in anticipation of litigation and therefore protected from discovery.

RESPONSE: Without waiving said objection, See Response to Staff's Data Request and Response to Staff's Data Requests (Second Set).

Request for Production No. 2 is a standard request. A party is entitled to see the information SDN provided its expert and the information and correspondence and exchanges the expert provided to SDN. This information is relevant and admissible.

Regarding your assertion that the preliminary analysis and exchange of information with the expert constitutes attorney work product, the exchange of information with an outside expert by an attorney does not create attorney work product when you are relying upon the expert's conclusions as part of the litigation.

Concerning your reference to the response you provided to Staff, there is only general information provided to Staff and there is no information provided as to what was exchanged with experts or received from experts.

As discussed above, this letter is to serve as a good faith attempt under SDCL 15-6-37(a)(2) as a meet and confer. It is my understanding the legislature is not in session this Friday. I understand you are lobbying, but I am available all day Friday to set up a call to discuss these issues.

If we do not get a call set, I will move forward with a Motion to Compel, assuming that you do not wish to discuss any of these matters further.

Sincerely,



Talbot J. Wieczorek

TJW:klw

c: via email: Kara Semmler/Brian Rounds

Margo D. Northrup

Bill Van Camp

Brett M. Koenecke

Clients