

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

=====

IN THE MATTER OF THE COMPLAINT
FILED BY SOUTH DAKOTA NETWORK, LLC
AGAINST SPRINT COMMUNICATIONS
COMPANY, LP REGARDING FAILURE TO
PAY INTRASTATE CENTRALIZED
EQUAL ACCESS CHARGES AND TO
IMMEDIATELY PAY UNDISPUTED PORTIONS
OF SDN'S INVOICES

TC09-098

=====

Transcript of Proceedings
May 22, 2012

=====

BEFORE THE PUBLIC UTILITIES COMMISSION,
CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN
GARY HANSON, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts-Wiest
Karen Cremer
Greg Rislov
Demaris Axthelm

APPEARANCES
Phil Schenkenberg, Sprint Communications
Talbot Wieczorek, Sprint Communications
David Carter, Northern Valley
Jim Cremer, Northern Valley

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State
3 Capitol Building, Room 413, 500 East Capitol Avenue,
4 Pierre, South Dakota, on the 22nd day of May, 2012,
5 commencing at 9:30 a.m.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CHAIRMAN NELSON: We will at this time move into
2 TC09-098, In the Matter of the Complaint filed by
3 South Dakota Network, LLC against Sprint Communications
4 Company regarding failure to pay intrastate centralized
5 equal access charges and to immediately pay undisputed
6 portions of SDN's invoices. And then in the matter of
7 the third-party Complaint from Sprint Communications, LP
8 against Northern Valley Communications and Capital
9 Telephone Company.

10 Last Thursday we heard arguments on three
11 different motions in that Docket. At this point I would
12 open it up for motions from the Commission.

13 Commissioner Fiegen.

14 COMMISSIONER FIEGEN: The first Motion I would
15 like to talk about is the Partial Summary Judgment.

16 I move that the Commission deny Sprint the
17 Motion for Partial Summary Judgment and that they have
18 failed to show and that they're entitled to that summary
19 judgment.

20 CHAIRMAN NELSON: Discussion on that Motion?
21 Any discussion?

22 Seeing none, all those in favor will vote aye.
23 Those opposed nay.

24 Commissioner Hanson.

25 COMMISSIONER HANSON: Aye.

1 CHAIRMAN NELSON: Commissioner Fiegen.

2 COMMISSIONER FIEGEN: Fiegen votes aye.

3 CHAIRMAN NELSON: And Nelson votes aye. The
4 Motion carries, and the Summary Judgment is denied.

5 Further motions.

6 The next question that we're dealing with is
7 Northern Valley's Motion to Compel. And there are a
8 number of subparts to that. And I will -- I'm going to
9 make a Motion dealing with this Motion to Compel and
10 address each of the subparts individually.

11 I will move that in Northern Valley's Motion to
12 Compel, for Interrogatories 1 and 2 I recommend the
13 Commission grant the Motion to Compel with the
14 modifications that the references to "legal basis" be
15 removed and that all references -- and that references to
16 "all" be changed to "material facts."

17 In Interrogatory No. 4 and Document Request 15 I
18 move that we grant the Motion to Compel to the extent --
19 to the extent that any -- and my understanding is that
20 Sprint may have complied with some of this, but to the
21 extent that it is not fully complied with.

22 For Interrogatory No. 7, I find that the
23 Commission -- that the Commission finds the parties have
24 agreed to the volume of minutes in question, that that
25 has been resolved, and I grant the Motion to Compel so

1 far as Sprint will state in writing that it agrees with
2 the volumes that have been provided by Northern Valley to
3 Sprint.

4 On the revenue question from Interrogatory
5 No. 7, I would move to deny the Request to Compel for
6 revenues.

7 For Interrogatories 8 and Document Request 26
8 and 35 I move that the Commission deny the Motion to
9 Compel.

10 For Interrogatories 9 and Document Request 23
11 and 36 I move that the Commission grant the Motion to
12 Compel.

13 In Interrogatory 13 I move that the Commission
14 grant the Motion to Compel, but to any extent that Sprint
15 has not yet identified the testimony, they would be
16 required to provide the information once it has made such
17 identification.

18 Document Request No. 1, I would deny the Motion
19 as unduly burdensome.

20 Document Request 34 I grant the Motion. On the
21 issue of the document redactions, I grant the request to
22 compel the redactions to be removed from the documents.
23 On the issue of the February 13 letter, I deny the
24 request to remove the confidential status of that at this
25 time. And, lastly, I recommend denying the request for

1 expenses.

2 That is like a mega Motion. Discussion on the
3 Motion or any potential amendments?

4 Commissioner Fiegen.

5 COMMISSIONER FIEGEN: First of all, on 34,
6 Document Request 34, I assume that is limited to current
7 agreements in South Dakota?

8 CHAIRMAN NELSON: Correct.

9 COMMISSIONER FIEGEN: Okay. And then -- okay.
10 And the next one -- there will be one more Motion yet;
11 right?

12 CHAIRMAN NELSON: Correct.

13 COMMISSIONER FIEGEN: Okay. So I'm waiting for
14 the next Motion. That's the only comment I would have.

15 CHAIRMAN NELSON: Right. This does not deal
16 with any of the deposition issues.

17 COMMISSIONER FIEGEN: Thank you. That's my only
18 comment.

19 CHAIRMAN NELSON: Other discussion?

20 Before we move -- seeing no other discussion,
21 before we move to a vote on the Motion, I would ask maybe
22 both parties, have we missed anything here? As we have
23 tried to piece this together and realizing, you know, we
24 have not granted everything either side wanted,
25 obviously, but have we missed anything under this Motion

1 to Compel that needs to be addressed?

2 And I'll ask -- I'll ask Northern Valley that
3 question first.

4 MR. CARTER: Thank you, Chairman Nelson. This
5 is David Carter from Northern Valley. As I went through
6 what you said and what was in the Motion, I didn't
7 identify anything that was missing.

8 CHAIRMAN NELSON: Thank you.
9 Mr. Schenkenberg.

10 MR. SCHENKENBERG: Thank you, Mr. Chairman. I
11 am on the road without my complete kit. I don't see
12 anything that's been missed. If Mr. Wieczorek is on the
13 line and disagrees with me, I'd ask him to speak up.

14 CHAIRMAN NELSON: Mr. Wieczorek, anything to
15 add?

16 MR. WIECZOREK: I don't see anything that's been
17 missed, Mr. Chairman.

18 CHAIRMAN NELSON: Thank you. I appreciate that.
19 Further discussion from the Commission?

20 Seeing none, all those in favor will vote aye,
21 those opposed, nay.

22 Commissioner Hanson.

23 COMMISSIONER HANSON: Aye.

24 CHAIRMAN NELSON: Commissioner Fiegen.

25 COMMISSIONER FIEGEN: Fiegen votes aye.

1 CHAIRMAN NELSON: Nelson votes aye. Motion
2 carries.

3 We have one additional Motion to deal with, and
4 this is in regard to Sprint's Motion For a Protective
5 Order regarding Northern Valley's corporate deposition
6 notice. I will delve in and make a Motion here also for
7 discussion purposes.

8 I would move that for Topics 5, 6, and 21 that
9 we deny this Motion except for what has already been
10 agreed to. And there was considerable discussion
11 Thursday about some areas where there had been some
12 agreement that has come together between the two parties.
13 And so I want to make it very clear that my Motion to
14 Deny ought not undo any of those agreements that you had
15 when we talked on Thursday.

16 Topic 7, I would move to deny.

17 Topic 10, I would move to deny.

18 Topic 22, I would move to deny.

19 Topic 24, I would grant.

20 22 I am denying, and 24 I would grant.

21 25, I would deny.

22 27, I would grant.

23 28, I would deny.

24 And then 29 through 44, I would grant.

25 46 and 47, I would deny. And in regard to the

1 issue of Sprint's corporate affiliates, I would include
2 in the Motion that all of this be limited strictly to
3 Sprint Communications, LP.

4 And the last issue that I would include in the
5 Motion -- and this would apply to Topic 7 -- that we
6 allow the inclusion of deposition of outside attorneys as
7 part of Topic 7. That was an ancillary issue there.

8 Discussion on the Motion?

9 We're going to take just a little bit of time
10 here so that Commissioners can review the Motion.

11 For those that are not familiar with this Docket
12 or these motions, we're trying to get our arms around an
13 octopus here, and so it's going to take just a little bit
14 of time to make sure we've got everything right.

15 Commissioner Fiegen.

16 COMMISSIONER FIEGEN: It looks like your Motion
17 is in order. I just wanted to make sure because it seems
18 like there were some questions if we deny something, then
19 if we grant something, it just had to follow through on
20 all of the motions. So I would go along with your Motion
21 today.

22 CHAIRMAN NELSON: Further discussion on the
23 Motion?

24 Okay. At this point I'd like to allow both
25 parties again to ask the question have we missed

1 addressing anything that needs to be dealt with for this
2 Motion?

3 And I'll turn first to Sprint. Mr. Wieczorek or
4 Mr. Schenkenberg?

5 MR. SCHENKENBERG: Thank you, Mr. Chairman.
6 With the same disclaimer as on the last question, I do
7 not see anything that was missed.

8 CHAIRMAN NELSON: Mr. Wieczorek?

9 MR. WIECZOREK: I do have one clarification
10 question. The end when you were going through the
11 denials and grants you said something about limiting --
12 as I understood, it was to limit something that you --
13 any areas of inquiry to Sprint, LP and not to other
14 companies or entities.

15 Does that apply then to everything that you
16 denied?

17 CHAIRMAN NELSON: That is correct. It would be
18 Sprint Communications, LP, and that applies to every one
19 of the topics, yes.

20 MR. WIECZOREK: Okay. To the extent that you
21 might have denied something, there was not an intent that
22 it would apply to companies beyond Sprint Communications,
23 LP?

24 CHAIRMAN NELSON: That is correct. And so to an
25 extent we are granting the limitation and narrowing it

1 down to simply Sprint Communications, LP.

2 MR. WIECZOREK: All right. That's the one
3 clarification I wanted. Thank you, Mr. Chairman.

4 CHAIRMAN NELSON: Thank you.

5 Mr. Carter, have we missed anything?

6 MR. CARTER: Not to my knowledge. It looks like
7 the Motion is complete.

8 CHAIRMAN NELSON: Thank you. With that, further
9 discussion from the Commission?

10 Seeing none, all those in favor will vote aye.

11 Commissioner Hanson.

12 COMMISSIONER HANSON: Aye.

13 CHAIRMAN NELSON: Commissioner Fiegen.

14 COMMISSIONER FIEGEN: Fiegen votes aye.

15 CHAIRMAN NELSON: Nelson votes aye. Motion
16 carries. And we are concluded with 09-098 for today.

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 22nd day of May,
11 2012, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 1st day of
14 June, 2012.

15

16

17

18 _____
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter

23

24

25