

**BEFORE 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 L.P. REGARDING FAILURE TO)
PAY INTRASTATE CENTRALIZED EQUAL)
ACCESS CHARGES AND TO IMMEDIATELY)
PAY UNDISPUTED PORTIONS OF SDN'S)
INVOICES.)

**ORDER DISMISSING THIRD
PARTY COMPLAINT;
ORDER APPROVING
PROCEDURAL SCHEDULE**

TC09-098

IN THE MATTER OF THE THIRD PARTY)
COMPLAINT OF SPRINT COMMUNICATIONS)
COMPANY LP AGAINST SPLITROCK)
PROPERTIES, INC., NORTHERN VALLEY)
COMMUNICATIONS, INC., SANCOM, INC.,)
AND CAPITAL TELEPHONE COMPANY)

On October 29, 2009, South Dakota Network LLC (SDN) filed with the Public Utilities Commission (Commission) a complaint against Sprint Communications LP (Sprint) for 1) failing to pay intrastate centralized equal access charges at the rates approved by the Commission; 2) failing to immediately pay undisputed portions of SDN's invoices as required by SDN's Tariff; and 3) for payment by Sprint of SDN's costs of action, reasonable attorneys fees incurred by SDN, and for twice the amount of damages sustained by SDN, if SDN is required to recover its damages by suit or on appeal. On November 24, 2009, Sprint filed a Motion to Dismiss Count III, an Answer, Affirmative Defenses, and Counterclaims, and a Third Party Complaint. On December 14, 2009, SDN replied to the counterclaim of Sprint.

On December 23, 2009, SDN filed a Corrected Reply to Sprint's Counterclaim. On January 22, 2010, Sancom, Inc. (Sancom), Northern Valley Communications, LLC (Northern Valley) and Splitrock Properties, Inc. (Splitrock) filed answers to Sprint's Third Party Complaint. On February 11, 2010, Sprint filed a Motion to Dismiss Northern Valley's Cross-Claim and a Motion to Dismiss Sancom's Cross-Claim. On February 22, 2010, SDN filed a Response to Sprint's Motion to Dismiss Count III. On February 23, 2010, the Commission granted Sprint's Motion to Dismiss Count III. On February 26, 2010, Northern Valley and Sancom filed a Consolidated Memorandum in response to Sprint's Motion to Dismiss Cross-Claims. On June 7, 2010, SDN filed a Stipulation to File and Serve Amended Complaint. On June 7, 2010, Sprint filed an Answer to SDN's Amended Complaint. On September 1, 2010, SDN filed a Motion for Summary Judgment and Memorandum in Support of Summary Judgment.

On January 19, 2011, Sprint filed a Motion Requesting a Protective Order Requiring the Parties to Comply with a Confidentiality Agreement and a Confidentiality Agreement. On February 1, 2011, Northern Valley and Sancom filed a revised Confidentiality Agreement. On February 1, 2011, the Commission granted Sprint's Motion Requesting a

Protective Order Requiring the Parties to Comply with a Confidentiality Agreement. On April 12, 2011, Sprint filed a Motion Requesting Approval of First Amendment to the Confidentiality Agreement which the Commission granted on April 19, 2011. On April 21, 2011, Sprint filed a Motion Requesting Approval of Stipulation Regarding Expert Discovery and a Stipulation Regarding Expert Discovery which the Commission granted on May 3, 2011.

On May 27, 2011, Northern Valley filed a Motion to Compel. On June 7, 2011, Sancom filed to join Northern Valley's Motion to Compel. On June 8, 2011, Northern Valley and Sancom filed a Motion for Adoption of Procedural Schedule. On June 14, 2011, Sprint filed an Amended Motion to Dismiss Northern Valley's Cross-Claims and an Amended Motion to Dismiss Sancom's Cross-Claims. On July 12, 2011, Sprint filed a Motion to Resolve Discovery Dispute between Sprint and Sancom. On August 24, 2011, Sprint filed a letter stating that Sprint and Sancom had resolved the issues regarding Sprint's Motion to Resolve Discovery Dispute. On August 30, 2011, the Commission granted Sprint's Amended Motion to Dismiss Northern Valley's Cross-Claim and Sprint's Amended Motion to Dismiss Sancom's Cross-Claims. The Commission did not act on Northern Valley's Motion to Compel because Northern Valley withdrew the motion. The Commission did not act on Northern Valley and Sancom's Motion for Adoption of Procedural Schedule because the parties agreed to try and come to an agreement on a procedural schedule.

On September 7, 2011, Sprint filed a Proposed Revised Procedural Schedule wherein the only part not agreed to by all of the parties was paragraph 9. Alternative language for paragraph 9 was proposed by Sprint and Northern Valley/Sancom. On September 9, 2011, Splitrock filed a Stipulation for Dismissal of Third Party Complaint of Sprint Communications, LP Against Splitrock Properties. The Stipulation between Sprint and Splitrock stated "that Sprint's Third Party Complaint against Splitrock may be dismissed with prejudice and without costs, and that an Order of Dismissal may be signed and filed by the Commission without further notice."

The Commission finds that it has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-13, and 49-31.

At its September 27, 2011, meeting, the Commission considered the Stipulation for Dismissal of Third Party Complaint of Sprint Communications, LP Against Splitrock Properties and the Proposed Revised Procedural Schedule. The Commission unanimously voted to approve the Stipulation for Dismissal and dismissed Sprint's Third Party Complaint filed against Splitrock. After listening to the arguments of the parties, the Commission voted to unanimously approve the Proposed Revised Procedural Schedule with the paragraph 9 language proposed by Northern Valley and Sancom.

It is therefore

ORDERED, that the Stipulation for Dismissal is approved and Sprint's Third Party Complaint filed against Splitrock is dismissed with prejudice; and it is

FURTHER OREDERD, that the Proposed Revised Procedural Schedule filed on September 7, 2011, is approved with the language for paragraph 9 as proposed by Northern Valley and Sancom and is hereby attached to this order.

Dated at Pierre, South Dakota, this 28 day of September, 2011.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u><i>Joy King</i></u>
Date: <u>09-28-11</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Issues to be Litigated and Manner of Proceeding

1. As part of this docket, the Commission will address the following issues:
 - A. As between SDN and Sprint – the issues raised in the pleadings between them, including the issues currently before the Commission pursuant to SDN's Summary Judgment Motion filed September 1, 2010, with respect to intrastate traffic billed on or before August 1, 2011.
 - B. As between Sprint and the Third Party Defendants – the issues raised in the pleadings between them, with respect to traffic billed on or before August 1, 2011.

Discovery Generally

2. SDN, Sprint and Third Party Defendants have agreed it is in their interest to coordinate and consolidate discovery (including party and non-party depositions) in this case with discovery that is anticipated in cases venued elsewhere. For example, the parties agreed it is impractical to separate discovery for the claims, defenses and damages relating to the parties' intrastate dispute from the claims, defenses and damages relating to the parties' interstate dispute. Accordingly, to the extent that a party is providing documents or conducting depositions, it is the intent of the parties to seek and make available discovery that would be relevant to both interstate and intrastate matters.

3. Notwithstanding the above, Sprint and certain Third Party Defendants disagree about the scope of discovery that is relevant to the issues referred to the Commission and the Federal Communications Commission. The parties will articulate their respective positions in (or in response to) appropriate motion papers.

4. Discovery may be served by any party immediately (and, indeed, many parties

have already served discovery requests and responses), but the parties agreed to take efforts to avoid lodging repetitive discovery requests. Responses to discovery requests are due 20 days after service. Each party will have the ongoing obligation to update and supplement discovery responses. Within 7 days of receipt of each other's respective discovery responses, or as soon as practicable thereafter, both parties shall make a good faith effort to resolve any issues related to deficient discovery responses. If the parties are unable to resolve any discovery issues that may arise, any Motions(s) to Compel shall be filed with the Commission.

5. Discovery requests and responses shall not be filed with the Commission unless necessary in connection with a motion to compel or if introduced as a hearing exhibit.

6. The parties will coordinate depositions and discovery with those occurring in other related cases, to the full extent possible, so that this case proceeds efficiently.

Procedural Schedule

7. The Commission adopts the following procedural schedule:

A. SDN's Motion for Summary Judgment will be heard at the Commission's **October 25, 2011**, meeting. SDN may file updated motion papers (including supporting Briefs) no fewer than 30 days before the hearing Sprint's response will be due 14 days before the hearing, and SDN's reply will be due three days before the hearing. On this Motion, the Commission will make no decision on the issues between Sprint and Third-Party Defendants.

B. All written discovery requests (other than requests directed at pre-filed testimony) shall be served no later than **October 11, 2011**. Written

discovery requests directed at statements made in pre-filed testimony may be served within 14 days after the testimony is filed.

C. All fact depositions shall occur no later than **November 8, 2011**.

D. On or before **December 1, 2011**, SDN shall serve and file direct testimony, including exhibits, with respect to issues not resolved on its Motion for Summary Judgment.

E. On or before **January 10, 2012**, Sprint may serve and file reply testimony to SDN's testimony, and direct testimony with respect to its third party complaints.

F. On or before **February 17, 2012**, any third party defendant(s) shall serve and file reply testimony.

G. On or before **March 23, 2012**, SDN and Sprint may file rebuttal testimony, which shall be limited to new matters raised in reply testimony.

H. The hearing shall be set for 5 days beginning after **April 23, 2012**, or as the Commission's calendar allows. No witness shall be allowed to testify at the hearing unless that witness has pre-filed testimony pursuant to this schedule.

I. A post hearing briefing schedule will be set at the hearing.

8. Service in this case shall be accomplished by email, which is effective upon receipt by the party served.

9. Documents produced in response to discovery requests shall be produced in searchable .pdf or .tif format or, in the case of worksheets, spreadsheets or cost calculations, in native, unprotected electronic format. The inclusion of confidential, but not privileged information, will not be a basis for a party to refuse to provide the native

format of spreadsheets that otherwise would be subject to production.