

**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 GRANTING  
MOTIONS TO DISMISS  
CROSS-CLAIMS**

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 LLC (Sprint) for 1) failing to pay intrastate centralized equal access charges at the rates approved by the SDPUC, 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, a Memorandum in Support of 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.

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

At its ad hoc August 30, 2011, meeting, the Commission considered Sprint's Amended Motion to Dismiss Northern Valley's Cross-Claim, Sprint's Amended Motion to Dismiss Sancom's Cross-Claims, Northern Valley's Motion to Compel, and Northern Valley and Sancom's Motion for Adoption of Procedural Schedule.

The Commission first heard oral argument regarding Sprint's motions to dismiss the cross-claims. After hearing the arguments of the parties, the Commission voted to grant Sprint's Amended Motion to Dismiss Northern Valley's Cross-Claims and Sprint's Amended Motion to Dismiss Sancom's Cross-Claims (Chairman Hanson, dissenting). SDCL 49-13-1.1 provides that "[a]ny person claiming to be damaged by any telecommunications company or motor carrier may either make complaint to the commission or may bring suit on his own behalf for the recovery of damages in any court of competent jurisdiction in this state, but no person may pursue both remedies at the same time." In their cross-claims, Northern Valley and Sancom sought damages from Sprint for intrastate switched access charges that they claim Sprint owes them. These requests for damages regard the same damages that Northern Valley and Sancom are currently seeking in federal court actions. See *Northern Valley Communications LLC v. Sprint Communications Co., LP*, 08-CV-1003-KES (D.S.D.); *Sancom, Inc. v. Sprint Communications Co., LP*, 07-CV-4107-KES (D.S.D.). Northern Valley and Sancom described the motions to dismiss the cross-claims as moot and stated that they are going to withdraw any requests for damages. Tr. at 22. However, Northern Valley and Sancom argued that the federal court has referred issues regarding intrastate access charges to the Commission, that those referred issues are before the Commission, and therefore, the cross-claims should not be dismissed. Tr. at 18. After review of the federal court's orders, the Commission finds that no issues have been referred to the Commission by the federal court. The orders issued by the federal court only state that the court stayed its proceedings pending resolution of this complaint proceeding; the court did not state that it was referring any issues to the Commission. See Exhibits B and D, attached to Northern Valley and Sancom's Motion for Adoption of Procedural Schedule. Therefore, given that Northern Valley and Sancom have sought

recovery of damages in federal court, the Commission finds that, pursuant to SDCL 49-13-1.1, they are prohibited from bringing their cross-claims for damages in this proceeding.

In its Motion to Compel, Northern Valley requests that the Commission "resolve a threshold issue of relevancy in this proceeding by finding that Northern Valley is entitled to discovery relating to Northern Valley's alternative theory of recovery, unjust enrichment, and Northern Valley's entitlement to compensation for intrastate traffic if Northern Valley's tariff does not apply and a reasonable rate for such compensation." Motion to Compel at 1. Sancom joined in Northern Valley's Motion to Compel. After discussion of the motion, Northern Valley and Sancom agreed to withdraw the Motion to Compel. Tr. at 75.

Regarding the Motion for Adoption of Procedural Schedule, after discussion among the parties, it was agreed that the parties would attempt to come to an agreement on a procedural schedule within eight days. Tr. at 84.

It is therefore

ORDERED, that Sprint's Amended Motion to Dismiss Northern Valley's Cross-Claims and Sprint's Amended Motion to Dismiss Sancom's Cross-Claims are hereby granted.

Dated at Pierre, South Dakota, this 15<sup>th</sup> 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>Tina Douglas</u>
Date:	<u>9-15-11</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

GARY HANSON, Chairman (dissenting)

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner