

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER TC09-098

IN THE MATTER OF THE)
COMPLAINT OF SOUTH DAKOTA)
NETWORK, LLC, AGAINST SPRINT)
COMMUNICATIONS COMPANY,)
LP)

AMENDED AFFIDAVIT

AFFIDAVIT OF MARK SHLANTA

COMES NOW, Mark Shlanta, after being first duly sworn under oath, deposes and states as follows:

1. My name is Mark Shlanta. I am the Chief Executive Officer of South Dakota Network, LLC (SDN). I submit this Affidavit in support of SDN's Amended Motion for Partial Summary Judgment and Memorandum in Support thereof filed in the above named docket.
2. SDN is the centralized equal access provider for many rural local exchange carriers (LECs) in South Dakota. Centralized Equal Access (CEA) allows end users to automatically select a presubscribed long distance carrier for toll calls via a centralized presubscription look-up and concentration service for delivery of traffic of end user long distance traffic to that end user's chosen service provider. CEA refers to the ability of an end user customer to dial the number 1 plus the 10 digit telephone number to select the provider of that customer's long distance service. In this instance the calls would necessarily be dialed by the calling party located in South Dakota as 1-605-NXX-XXXX.

3. SDN provides equal access and switched transport services to interexchange carriers (IXCs), which allows the IXCs to access the LECs that subtend SDN's Access Tandem. SDN charges centralized equal access switching and transport fees to IXCs for the tandem switched access services it provides, the provision and pricing of which services are governed by SDN's authorized federal and state tariffs.
4. As a common carrier and provider of access tandem services, SDN's Sioux Falls access tandem is designated as such in the Local Exchange Route Guide (LERG) and accordingly, provides tandem functionality to any participating carrier (LEC and/or CLEC) that chooses to utilize its services for purposes of exchanging traffic with interconnected long distance carriers.
5. Sprint is an IXC authorized to do business in the State of South Dakota. Sprint, as an IXC, ordered CEA services pursuant to the SDN intrastate tariff to originate and terminate long distance or toll calls from its customers that are either served on an originating basis from LECs that use the SDN CEA service to connect with IXCs or seek to complete calls to numbers served by those same LECs. SDN as the CEA provider, supplied the originating and terminating CEA services provided for under its authorized tariff and accordingly, charged Sprint for intrastate CEA charges.
6. SDN sent a monthly invoice to Sprint for these CEA charges for many years. SDN charged the amounts authorized in its intrastate access tariff for CEA service. (SDN Tariff, Section 5.7.1). Sprint paid these invoices in full and without protest until April of 2009.

7. With regard to SDN's May 2009 invoice for April services, Sprint disputed the portion of the traffic it claimed was "stimulated" or "pumped" traffic. (See Attachment A). In addition to disputing a portion of SDN's current billing for April 2009 CEA services, Sprint's dispute notice also attempted to dispute past invoices, i.e. from June 2007 through April 2009, by requesting a refund from SDN for payments Sprint made to SDN for traffic delivered from Sprint, through SDN, to Sancom, Splitrock, Northern Valley, and Capital. (See Answer of Sprint, ¶ 16).
8. The traffic was delivered to SDN via Feature Group D (FGD) access services ordered by Sprint. FGD service establishes the connection path between an IXC and the SDN tandem switch, and in this case, was ordered by Sprint pursuant to SDN's authorized tariff (SDN Tariff, Section 5.2). FGD is to be used only with switched access traffic. Sprint has made no demand that SDN not terminate the pumped traffic to the called party. Sprint, on behalf of its customers, has not requested or submitted orders for services alternative to FGD services to re-route pumped traffic to the called party.
9. Sprint provided SDN with a breakdown of what it refers to as "undisputed" and "disputed" portions of the SDN invoices. The disputed portion of the invoices purports to be related to traffic Sprint identifies as "pumped" traffic that Sprint alleges is stimulated by illegal activities of the LEC to which the traffic is terminated. The undisputed portion of the invoices is for what Sprint characterizes as "unpumped" traffic (See Attachment A). Sprint has arbitrarily segregated the traffic as "pumped" and "unpumped" without providing the

appropriate call detail records to verify the classification, despite requests for the information by SDN.¹

10. All of the traffic in question traversed FGD facilities and was switched through SDN's CEA tandem switch.
11. Since May of 2009 Sprint has paid for neither the disputed nor the undisputed traffic because Sprint apparently claims authority to offset earlier payments it made to SDN (June 2007 to April 2009) by withholding payment of undisputed current charges. As of September 1, 2011, Sprint owed SDN a total of \$941,009.42 for CEA chargers for intrastate minutes of use, excluding late charges, and this amount grows on a monthly basis.²
12. Sprint delivers the terminating traffic to the SDN CEA tandem switch, representing to SDN that it is switched access traffic as defined by SDN's Tariff to be terminated to the LEC identified in the data flow (or signaling) that is inherent with each call. As a common carrier, SDN does not screen or otherwise analyze the nature of this traffic in the performance of its CEA functions; SDN is only aware at the time the traffic is delivered to SDN for transport to the terminating LEC that Sprint has sent this traffic using FGD services Sprint has ordered from SDN with call information sufficient for SDN to terminate the call to the appropriate LEC. SDN does not know why Sprint's end user chose to establish this communication. SDN only provides CEA services for traffic

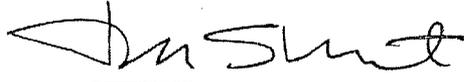
¹ For purposes of SDN's Amended Motion for Partial Summary Judgment, SDN is not disputing the classification of the traffic by Sprint and is relying on Sprint's classification as to whether the traffic is "pumped or "unpumped" for billing purposes only.

² As of September 1, 2011, Sprint owed SDN \$4,602,511.52 total on all unpaid invoices dated May 1, 2009 through September 1, 2011, which amount includes interstate and intrastate charges and late charges authorized by SDN's tariff (SDN Tariff, Section 2.4.1).

presented by Sprint as access traffic. SDN cannot block, reroute or otherwise alter the transmission of traffic submitted by Sprint to the SDN tandem using FGD service.

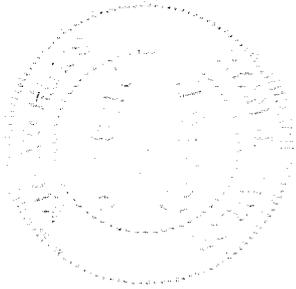
13. SDN made demand for the total amount due. SDN has repeatedly demanded immediate payment of the undisputed portion of the invoices. (See Attachment B). Sprint has refused to pay not only the disputed portion of the invoices, related to alleged “pumped traffic”, but also the undisputed portion of the invoices, related to “unpumped traffic”. Instead of paying the undisputed portion of each invoice, as required by the tariff (SDN Tariff, Section 2.4.1(B)(2)), and as demanded by SDN, Sprint has engaged in an unauthorized and illegal self-help “accounting mechanism” whereby Sprint applies the undisputed portion of the current invoices as a “credit” to the disputed portion of the invoices, including the back claim amount. (Attachment A) There are no tariff provisions authorizing such a procedure by Sprint. In fact, 2.4.1(b)(2) provides that upon demand by SDN, which has been made, Sprint must pay the undisputed portion of the billing and following payment may pursue resolution of the disputed portion (emphasis added). Hence, if Sprint desires to continue with its contest of the disputed portion of the invoices, payment of the undisputed portion is a condition precedent thereto. Sprint has not made any payments to SDN since April of 2009, although it continues to receive CEA services each month.
14. SDN is authorized under its tariff to disconnect its service to Sprint but has chosen not to so at this point because it would adversely affect many customers in South Dakota.

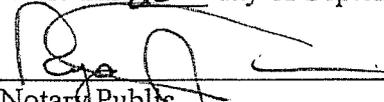
Dated this 23rd of September, 2011.



Mark Shlanta

Subscribed and sworn to before me this 23rd day of September, 2011.





Notary Public
My commission expires: _____
Notary Print Name: Ryan J. Taylor

**MY COMMISSION EXPIRES
JUNE 7, 2012**