

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

TC 09-098

**SPRINT COMMUNICATIONS COMPANY L.P.'S
MOTION TO DISMISS NORTHERN VALLEY'S COUNTERCLAIM**

COMES NOW Sprint Communications Company L.P. ("Sprint") by and through its attorney of record Talbot J. Wiczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, 440 Mount Rushmore Road, Third Floor, P.O. Box 8045, Rapid City, South Dakota 57701 and Philip R. Schenkenberg, Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, pursuant to ARSD 20:10:01:11.1 and SDCL § 15-6-12 moves to dismiss the Counterclaim of Northern Valley Communications, L.L.C. ("Northern Valley") for the following reasons:

First, Northern Valley's Counterclaim is procedurally defective because it amended its pleading without seeking or obtaining Sprint's consent or leave from the Commission. *See* ARSD 20:10:01:16. Second, Northern Valley's Count II should be dismissed to the extent Northern Valley asks the Commission to address equitable issues. The Commission has no equitable powers, and thus has no jurisdiction or authority to establish a "reasonable rate" in order to prevent "unjust enrichment." Third, Count II should be dismissed because if the traffic at issue is not subject to access charges there is no statute or rule that would allow the Commission to establish a retroactive "reasonable rate" for such non-access traffic.

Dated: October 17, 2011

GUNDERSON, PALMER, NELSON &
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By 

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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

DOCKET NUMBER TC 09-098

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

CERTIFICATE OF SERVICE

The undersigned certifies that on the 17th day of October, 2011, I served a true and correct copy of SPRINT'S MOTION TO DISMISS NORTHERN VALLEY'S COUNTERCLAIM in the above-entitled action electronically to:

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