

**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 MOTION
TO RESCHEDULE AUGUST
28, 2012 HEARING DATE**

TC09-098

**IN THE MATTER OF THE THIRD PARTY)
COMPLAINT OF SPRINT COMMUNICATIONS)
COMPANY LP AGAINST NORTHERN)
VALLEY COMMUNICATIONS, 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 21, 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 by Northern Valley and Sancom. On September 9, 2011, Splitrock filed a Stipulation for Dismissal of Third Party Complaint of Sprint Communications, LP against Splitrock Properties. On September 27, 2011, the Commission approved the Stipulation for Dismissal and dismissed Sprint's Third Party Complaint filed against Splitrock. In addition, the Commission approved the Proposed Revised Procedural Schedule with the paragraph 9 language proposed by Northern Valley and Sancom.

On September 23, 2011, SDN filed an Amended Motion for Partial Summary Judgment. On October 7, 2011, Northern Valley filed a Counterclaim Against Sprint. On October 17, 2011, meeting, Sprint filed a Motion to Dismiss Northern Valley's Counterclaim. On October 27, 2011, Sprint filed a Motion to Enforce Subpoenas and Modify Procedural Schedule. On November 7, 2011, Northern Valley filed a Motion for Leave to file Counterclaims. At the Commission's November 22, 2011, meeting, Sprint requested that no action be taken on its Motion to Enforce Subpoenas and Modify Procedural Schedule. At its December 20, 2011, meeting, the Commission granted SDN's Amended Motion for Partial Summary Judgment and Northern Valley's Motion for Leave to File Counterclaims. The Commission denied Sprint's Motion to Dismiss Northern Valley's Counterclaim (Commissioner Hanson, dissenting).

On December 21, 2011, a Stipulation for Dismissal of Third Party Complaint of Sprint Communications Company, LP against Sancom, Inc. was filed. At its January 3, 2012, meeting, the Commission approved the Stipulation for Dismissal and dismissed Sprint's Third Party Complaint filed against Sancom. On February 15, 2012, Northern Valley filed a Motion to Compel against Sprint. On March 12, 2012, Sprint filed a Motion for Partial Summary Judgment. On April 12, 2012, Sprint filed a Motion for Protective Order Regarding Northern Valley's Corporate Deposition Notice. Responses and replies were filed regarding the motions.

At its ad hoc May 17, 2012, meeting, the Commission considered Sprint's Motion for Partial Summary Judgment, Northern Valley's Motion to Compel, and Sprint's Motion for Protective Order Regarding Northern Valley's Corporate Deposition Notice. After hearing argument from the parties, the Commission took the motions under advisement. At its May 22, 2012, meeting, the Commission ruled on the motions. The Commission voted unanimously to deny Sprint's Motion for Partial Summary Judgment. The Commission voted unanimously to grant in part and deny in part Northern Valley's Motion to Compel. The Commission voted unanimously to grant in part and deny in part Sprint's Motion for Protective Order Regarding Northern Valley's Corporate Deposition Notice.

On July 27, 2012, Sprint filed a Motion to Reschedule August 28, 2012 Hearing Date. On July 30, 2012, Northern Valley filed its Response in Opposition to Motion to Reschedule August 28, 2012 Hearing Date and Sprint filed its Reply to Northern Valley's Opposition to Reschedule August 28, 2012 Hearing Date. Sprint requested additional time to respond to Northern Valley's Motion for Partial Summary Judgment.

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

On July 31, 2012, the Commission considered Sprint's Motion to Reschedule August 28, 2012 Hearing Date. After hearing argument from the parties, the Commission voted to grant Sprint's Motion to Reschedule August 28, 2012 Hearing Date (Commissioner Nelson dissenting). It is therefore

ORDERED, that Sprint's Motion to Reschedule August 28, 2012 Hearing Date is granted.

Dated at Pierre, South Dakota, this 7th day of August, 2012.

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>Joy Brining</u>
Date: <u>August 8, 2012</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

CHRIS NELSON, Chairman (dissenting)

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Gary Hanson
GARY HANSON, Commissioner