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	)	

PUBLIC VERSION

SPRINT COMMUNICATIONS COMPANY L.P.'S RESPONSE TO NORTHERN VALLEY'S MOTION TO COMPEL

Sprint Communications Company L.P. ("Sprint") respectfully responds to Northern Valley Communications L.L.C.'s ("Northern Valley") Motion to Compel. For the reasons stated herein, the Commission should deny Northern Valley's motion.

Despite representing to the Commission that it seeks only to enforce statutory rights, Northern Valley continues pursuing what it unabashedly calls its "unjust enrichment" claim, an equitable claim. The Commission should affirm that it has no equitable powers and cannot determine whether Sprint has been unjustly enriched as it evaluates Northern Valley's request for a statutory rate. To the extent the Commission can set a rate, that rate must be based on Northern Valley's costs, and must apply to all potential users of the service, not just Sprint. The Commission can and should dispose of much of the pending motion by affirming that it cannot set a call termination rate for Northern Valley based on Sprint's revenue information.

The Commission should also reject Northern Valley's contention that it can use the discovery process to conduct a massive fishing expedition into facts that are irrelevant to any

party's claims or defenses. Northern Valley Mem. in Supp. of Mot. To Compel ("Northern Valley Mem."), p. 17 ("discovery is not limited to particular claims"). To the contrary, South Dakota law mandates that discovery, especially discovery as burdensome as that at issue here, must be related to claims or defenses and must be calculated to lead to evidence that will be admissible at trial.

Northern Valley's discovery tactics are not intended to efficiently move this case to hearing. Instead, Northern Valley is trying to make this case extremely expensive and unnecessarily difficult for Sprint, hoping to prompt a settlement, or at least distract the Commission from Northern Valley's bad acts. The Commission should reject Northern Valley's tactics and deny Northern Valley's motion.

I. PRELIMINARY MATTERS

A. Procedural History

Northern Valley's summary of the procedural history of this case omits one significant point. Northern Valley Mem., pp. 1-4. At the hearing in December of 2011, the Commission considered whether to allow Northern Valley's Counterclaim Count II to proceed. At issue was whether the counterclaim sought to enforce equitable rights, and if so, whether it should be dismissed. When pressed by the Commission, Northern Valley represented multiple times that it sought only what the statute allowed:

- MR. CARTER: "[T]he Commission has the authority granted by statute." (Dec. 20, 2011 Hearing Tr. p. 54.)
- MR. CARTER: "And so here I think the statute is what governs." (Dec. 20, 2011 Hearing Tr. p. 55.)
- MS. AILTS WIEST: "Mr. Carter, I guess I'm trying to pin this down a little bit more closely.

  I believe you stated we have the authority granted to us by statute but that when you refer to words such as just and

> reasonable, those are words that are commonly or could be associated with some sort of equitable ideas.
>
> But so you're not actually asking, though, for equitable grounds such as unjust enrichment. Your position is that the statute that refers to just and reasonable charges are the basis for what you're talking about?"
>
> MR. CARTER: That's correct.
>
> (Dec. 20, 2011 Hearing Tr. pp. 59-60.)

- MR. CREMER: "So you don't have to go beyond 49-13-13 . . . ." (Dec. 20, 2011 Hearing Tr. p. 66.)

Northern Valley's reliance on the statute (and only the statute) was necessary and appropriate, as there appeared to be agreement that the Commission lacks equitable powers. *See, e.g., id.* pp. 53-54 (Staff's Recommendation), p. 67 (Commissioner Nelson).[1] Sprint understood the Commission to have allowed Counterclaim Count II to proceed because of Northern Valley's representation that it only sought statutory, not equitable, relief.[2]

Now, Northern Valley attempts to spin the Commission's decision as justifying its demand for information that is beyond the scope of the rate-setting statute, and that would purportedly be used to prevent Sprint from being unjustly enriched. The Commission should reject this theory – Northern Valley's discovery must be limited to evidence that could be used to set a regulated service rate applicable to all carriers that might terminate non-access calls. How

[1]*See, e.g., Black Hills Fibercom, L.L.C. v. Qwest Corp.*, Am. Interim Decision and Order, No. CT03-154, 2005 WL 856149, at *9 (S.D. PUC Mar. 14, 2005) ("With respect to Qwest's claims of intentional interference with business relations and unjust enrichment, the Commission finds that to the extent these claims may state causes of action under state law despite the interstate nature of the service, the Commission nevertheless lacks jurisdiction because these claims are grounded in the common law of tort and equity."). Sprint has briefed this issue twice already in this case.

[2]Sprint does not concede that SDCL § 49-13-13 authorizes the Commission to set a rate in this case, but recognizes the Commission has, at least for the time being, allowed that claim to remain in this case.

one "customer" of such a service may or may not use that "service" to generate revenue is not a consideration in a statutory rate setting.

B. As the Commission Cannot Set A Rate for Interstate Traffic, The Commission Cannot Order Sprint to Provide Information that Would be Used to Set an Interstate Rate

It is undisputed that the Commission's jurisdiction is limited to intrastate services. Northern Valley's discovery requests seek both interstate and intrastate information. While the parties have endeavored to conduct discovery that covers both interstate and intrastate matters, the Commission only has the authority to compel production of material related to intrastate claims and defenses. Northern Valley recognizes this limitation and acknowledges that it is not asking the Commission to order Sprint to produce any information that would be used to set a rate for interstate traffic. Northern Valley Mem., p. 11, fn.2.

This is especially important because the amount of discovery sought, and the burden associated with responding, greatly outweigh the intrastate amounts at issue. Based on information provided by Northern Valley, since September 2007, Northern Valley has invoiced Sprint **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for intrastate traffic destined to Northern Valley's CCCs. Affidavit of Philip R Schenkenberg (March 12, 2012) ("Schenkenberg Aff.") ¶ 22. This is in contrast to the many millions of dollars Northern Valley has billed Sprint for interstate traffic. Where, as here, the amount of discovery requested and burden of responding greatly outweigh the value of a claim, the Commission can and should deny a motion to compel. SDCL § 15-6-26(b)(1)(A) (discovery may be limited if it is "unreasonably cumulative or duplicative" or "unduly burdensome or expensive, taking into account . . . the amount in controversy"); *see also, Murphy v. Kmart Corp.*, 255 F.R.D. 497, 501 (D.S.D. 2009) (restricting certain requested discovery after recognizing that the federal rule "requires the court to limit discovery if it determines, for example, . . . the burden or expense of

the proposed discovery outweighs its likely benefit") (internal quotations omitted); *Roberts v. Shawnee Mission Ford, Inc.*, 352 F.3d 358, 361 (8th Cir. 2003) (upholding a decision granting a motion to quash, recognizing that a district court has the "discretion to limit discovery if it determines, inter alia, the burden or expense of the proposed discovery outweighs its likely benefit").

Northern Valley will not be harmed by a ruling denying the motion because of the small size of Northern Valley's intrastate claim. If the Commission denies the requested discovery on this basis, Northern Valley would still be free to seek discovery on its interstate claims from a federal court or the FCC.

C. Standard for Discovery

Under South Dakota administrative rules, Northern Valley must show "good cause" to succeed on a motion to compel discovery. ARSD 20:10:01:22.01. In a discovery setting, the showing of good cause "is not met by mere conclusory allegations of the pleadings, nor mere relevance to the case, but requires an affirmative showing by the movant that good cause exists for the order sought." *Alger v. Am. Family Mut. Ins. Co.*, 84 S.D. 137, 141, 168 N.W.2d 705, 707 (1969) (reversing an order compelling the production of documents because the movant had failed to show "good cause"). "In other words, good cause is more than relevancy. To hold otherwise would read the good cause requirement out of the rule." *Id.* (emphasis added).

Northern Valley ignores the good cause standard, and instead of showing more than relevancy, it attempts to show less than relevancy. Northern Valley asserts that, in South Dakota, "relevancy is broadly defined under the applicable discovery rules and discovery is not limited to particular claims." Northern Valley Mem., p. 17 (emphasis added). Relying on that purported standard, Northern Valley argues it can obtain any information about Sprint, without needing to

show how the particular information sought is relevant to claims or defenses, or calculated to lead to the discovery of admissible evidence. *Id.*

Northern Valley misstates South Dakota law, which does not authorize a litigant to engage in a limitless fishing expedition. Instead, the scope of discovery is defined as follows:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

SDCL § 15-6-26(b)(1) (emphasis added). Thus, South Dakota law is no different than the law of other jurisdictions – discovery must relate to a "claim or defense," and must be calculated to lead to the discovery of admissible evidence.[3] Stated more succinctly, "it is only relevant matter that may be the subject of discovery." 8 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2008, at 125 (2010 3d ed.). Under the South Dakota Rules of Evidence, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." SDCL § 19-12-1 (emphasis added). Thus, while "the scope of pretrial discovery is, for the most part, broadly construed," *Kaarup*, 436 N.W.2d at 19, "discovery, like all matters of procedure, has ultimate and necessary boundaries." *Id.* at 20 (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)).

[3]Indeed, Northern Valley's main case citation likens the discovery standard in South Dakota with the federal standard. Northern Valley Mem., p. 6 (citing *Kaarup v. St. Paul Fire & Marine Ins. Co.*, 436 N.W.2d 17, 20 (S.D. 1989) (quoting 8 Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2008 (2010 3d ed.)).

Accordingly, South Dakota courts routinely affirm decisions limiting the scope of discovery to relevant requests. *See, e.g., Kaarup*, 436 N.W.2d at 20 (parties failed to show that certain information from a previous action was relevant to the current action or would lead to discovery of admissible evidence); *State v. Buchholz*, 199 S.D. 110, ¶ 28, 598 N.W.2d 899, 905 (S.D. 1999) (requested discovery of a search warrant affidavit was properly denied when it was not related to charges against the defendant).

Northern Valley's attempt to obtain information that is not of consequence to the subject matter – i.e., the parties' claims or defenses – must fail. The claims and defenses before the Commission fall into two broad categories: (1) whether the calls at issue are subject to Northern Valley's and SDN's tariffed intrastate access charges based on the relationships between Northern Valley and its CCC partners, and (2) if the calls at issue are not subject to the tariffed intrastate access charges, whether the Commission has the authority to set a rate for those calls and, if so, what that rate should be. Under South Dakota rules, only relevant evidence – evidence directly related to at least one of these two categories and having the tendency to make the existence of a fact of consequence to this action more or less probable – is discoverable. As discussed below, Northern Valley has failed to show the relevance of the massive amounts of discovery it seeks, much less "good cause" supporting its motion. Consequently, Northern Valley's Motion to Compel should be denied.

D. The Claims and Defenses in this Case Cannot Turn on Sprint's Revenues, Motives, or Business Relationships

Discovery must be calculated to obtain evidence admissible to prove or defeat a claim or defense. Sprint's revenues, motives, or business relations are irrelevant to each of two basic claims in this case.

1. Sprint's business practices are not relevant to the application of Northern Valley's intrastate tariff

Sprint has alleged that the calls at issue are not being delivered to legitimate end users of Northern Valley's local exchange service, and that, as a result, Northern Valley's intrastate access tariff does not impose liability on those calls. Sprint's Third Party Complaint, ¶¶ 13-14. Northern Valley defends that claim by asserting that the calls are compensable under the tariff because Northern Valley's relationship with its CCCs is essentially deregulated under South Dakota law. *See* Northern Valley's Counterclaim Count I.

a. Northern Valley's tariff language

Whether Northern Valley's intrastate access tariff imposes access charges on calls to CCCs is a question that turns on Northern Valley's behavior, not Sprint's. Section 6.1 of Northern Valley's intrastate switched access tariff describes "Switched Access Service" as follows:

> Switched access service . . . provides a two point communications path between a customer designated premises and an end user's premises . . . . Switched Access Service provides for the ability to . . . terminate calls from a customer designated premises to an end user's premises in the LATA where it is provided. Schenkenberg Aff. Ex. A, § 6.1, Original Page 6-1 (emphasis added).

This clause will be evaluated in light of the following definitions:

> The term "Customer(s) denotes any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff, including Interexchange Carriers (ICs). Schenkenberg Aff. Ex. A, § 2.1, Original Page 2-47.
>
> . . .
>
> The term "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes, and a person or entity that offers telecommunications service exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller. Schenkenberg Aff. Ex. A, § 2.1, Original Page 2-50.

. . .

> Access Minutes: For the purpose of calculating chargeable usage, the term "Access Minute" denotes customer usage of exchange facilities in the provision of intrastate service. On the originating end of an intrastate call, usage is measured from the time the originating end user's call is delivered by the Telephone Company to and acknowledged as received by the customer's facilities connected with the originating exchange. On the terminating end of an intrastate call, usage is measured from the time the call is received by the end user in the terminating exchange. Timing of usage at both originating and terminating ends of an intrastate call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating exchanges, as applicable. Schenkenberg Aff. Ex. A, § 2.1, 2nd Revised Page 2-43. (Emphasis added).

The Commission is tasked with determining whether the intrastate calls at issue are compensable under these tariff terms.

b. The applicable tariff provisions require analysis of Northern Valley's business practices, not Sprint's revenues

To decide whether Northern Valley provided access service to Sprint, the Commission must determine (among other things) whether CCCs are "end users," whether CCCs have "premises," and whether calls to CCCs use local "exchange facilities." The facts that will bear on these questions are necessarily focused on Northern Valley's business practices, not Sprint's. For example, in deciding whether Northern Valley and its CCCs entered into legitimate arrangements for the provision of local exchange service, the Commission will necessarily consider whether the pricing provisions contained in Northern Valley's pre 2010-2011 CCC contracts evidenced sham arrangements. Such an analysis will require the Commission to consider (for example) the following evidence about Northern Valley's business practices:

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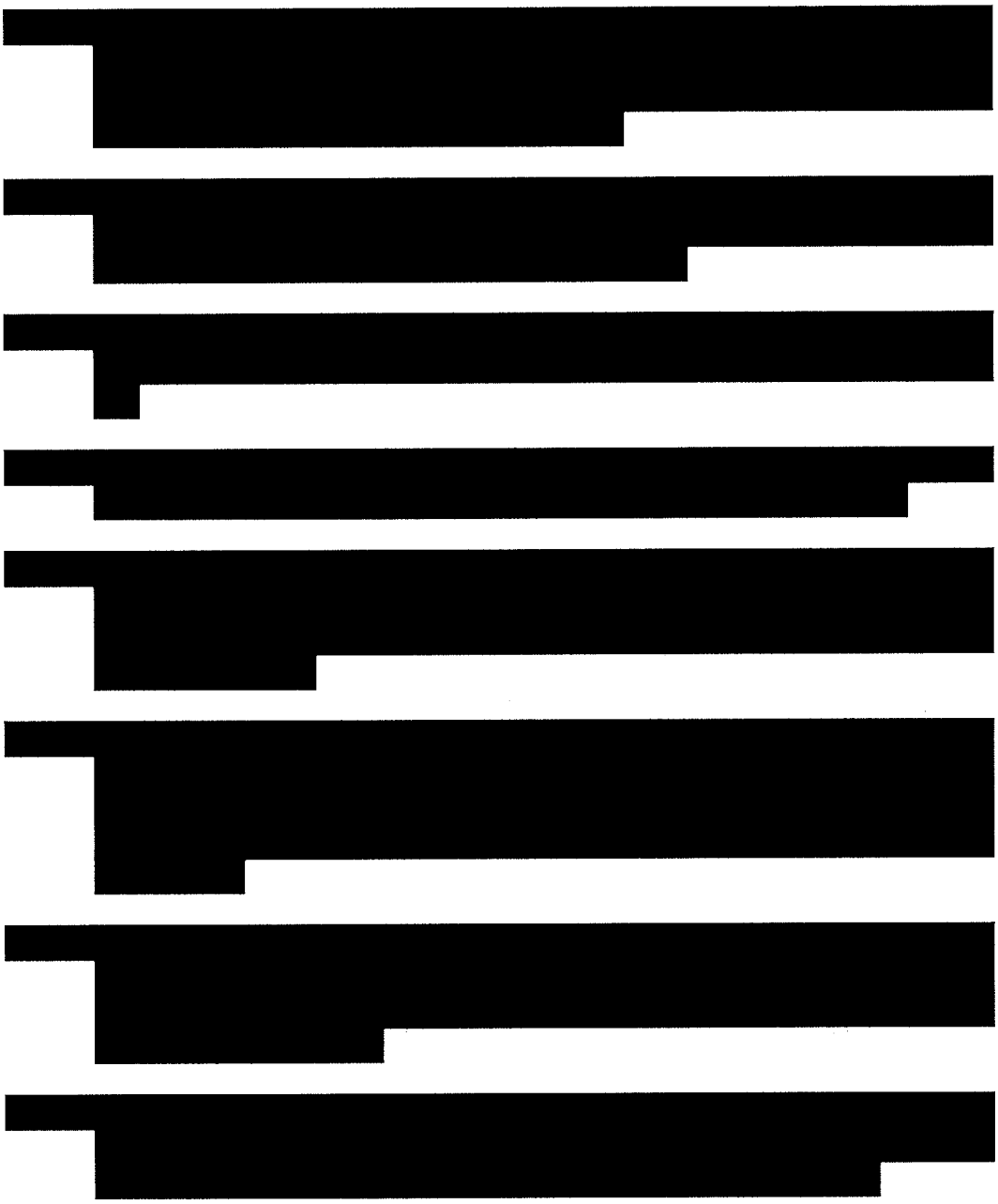

[END CONFIDENTIAL]

All of these facts are focused on Northern Valley's business practices, and the application of those facts to the tariff does not in any way turn on Sprint's business practices.

As such, the Commission should find Sprint's motive, revenues, and business practice irrelevant to the tariff interpretation and application questions presented.

c. The filed rate doctrine makes Sprint's motives and revenues irrelevant in a tariff application case

Under the filed rate doctrine, it is the tariff, not Sprint's motives or profits, that determine whether compensation is owed. *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2d Cir. 1998) ("Application of the filed rate doctrine in any particular case is not determined by the culpability of the defendant's conduct or the possibility of inequitable results"); *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 579-80 (1981) (no rate other than the one agreed to in a tariff may be applied, even if a contract was breached); *Firstcom, Inc. v. Qwest Corp.*, 555 F.3d 669, 679 (8th Cir. 2009) ("the filed rate doctrine prohibits a party from recovering damages measured by comparing the filed rate and the rate that might have been approved absent the conduct in issue") (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 954 F.2d 485, 488 (8th Cir. 1992) (internal quotations omitted); *Sancom, Inc. v. Qwest Commc'ns Corp.*, 643 F. Supp. 2d 1117, 1124 (D.S.D. 2009) ("The filed rate doctrine prohibits courts from granting relief that would have the effect of changing the rate charged for services rendered pursuant to a valid tariff."). Because the filed rate doctrine renders Sprint's motives and business practices irrelevant in a tariff application claim, that information cannot lead to evidence admissible with respect to those claims and defenses.

d. A Judge in Minnesota has held that the focus should be on the LEC's activities

This issue has been resolved in Sprint's favor in a traffic pumping case pending before the Minnesota Public Utilities Commission. In that case, Qwest and Sprint are seeking a determination that Tekstar's intrastate access charges do not apply to pumped traffic, and Tekstar's CCCs are not legitimate end users of local exchange service. Tekstar, a CLEC similar to Northern Valley, moved to compel Sprint to provide information related to Sprint's services

and revenues, claiming that evidence was relevant to various tariff application and damages issues. After briefing, the Administrative Law Judge concluded:

> [T]he focus of this contested case is properly on Tekstar's practices and whether the access charges in question comply with Tekstar's intrastate tariff and with the laws and rules governing the provision of local exchange service. If the disputed charges to apply, Tekstar has requested that the Commission require Qwest and Sprint to pay them, and in that event, the Department seeks an analysis of whether the access charges themselves are just unreasonable. This does not open the door to broad-ranging discovery concerning Sprint's pricing plans for long distance service or its revenues from different types of service offerings or for different types of calls (pumped vs. non-pumped).Moreover, Sprint has established that the requested discovery is overbroad, burdensome, unreasonable and oppressive, taking into account the issues or amounts in controversy and the costs or other burdens of compliance compared to the value of the information sought.

Schenkenberg Aff. Ex. K (MPUC Order on Motion to Compel), p. 8.

As in Minnesota, the Commission should decide that the issues of tariff applicability will turn on Northern Valley's business practices, not Sprint's, and should deny Northern Valley's discovery.

2. The Commission cannot set a rate based on Sprint's business practices or revenue information

The second claim in this case is Northern Valley's Counterclaim Count II, which asks the Commission to apply SDCL § 49-13-13 and set a rate in the event the calls are not compensable under Northern Valley's intrastate access tariff.[4] The Commission's ability to "determine and prescribe the just and reasonable charge" in SDCL § 49-13-13 must comply with statute. In the

[4]Sprint does not concede that the Commission can so act. Sprint believes SDCL § 49-13-13 is best read to allow the Commission to impose a remedy when a carrier's initial rate has been successfully challenged as unjust, unreasonable, or discriminatory. In other words, when a customer challenges a carrier's rate level – something not done here – the Commission can modify the rate to bring it into compliance with South Dakota law. This is far different than suggesting a carrier can invoke the statute to establish a retroactive rate for a service that has never been the subject of an earlier tariff filing. Nonetheless, Sprint assumes on this motion that the Commission can apply this statute to set a rate.

event the Commission were to establish a rate for Northern Valley's non-access traffic, nothing in state law authorizes discovery into Sprint's revenue information and business practices.

a. Any rate would apply to all carriers, not just Sprint

As an initial matter, Northern Valley's argument that Sprint's revenues can be used to set a rate is based on the flawed presumption that the Commission can set a rate specific to Sprint. Northern Valley's intent to set a "Sprint rate" based on Sprint's revenue information (Northern Valley Mem., pp. 16-17) makes clear it is pursuing an unjust enrichment claim, not a statutory rate.

b. South Dakota law imposes rate of return regulation and does not call for rate setting based on customer revenues

Northern Valley argues that the phrase "just and reasonable" in SDCL § 49-13-13 allows the Commission to set a rate based on Sprint's revenues. Northern Valley Mem. p. 16. Yet any rate setting by the Commission under SDCL § 49-13-13 must be consistent with one of the rate setting methodologies set by the Legislature. As an initial matter, SDCL § 49-31-4 reads:

> Except as provided in § 49-31-4.1, the commission shall utilize rate of return regulation when determining the charge for a noncompetitive service.

SDCL § 49-31-4.[5] Customer revenues are not used in setting a rate based on rate-of-return regulation. To the contrary, rate of return regulation is defined solely with respect to the financial information of the providing carrier:

> "Rate of return regulation," the procedure used by the commission to approve the charge for a service which gives due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for

[5]It is undisputed that call termination is a noncompetitive, monopoly service. *See., e.g., Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund*, WC Docket No. 10-90 et al., 2011 WL 5844975, FCC 11-161, ¶ 674 (rel. Nov. 18, 2011) ("*CAF Order*") ("terminating access is a monopoly service"). SDCL § 49-31-4.1 applies only when the Commission has established price regulation for a noncompetitive service, something not applicable here.

> revenues sufficient to enable it to meet its total current cost of furnishing such service, including taxes and interest, and including adequate provision for depreciation of its utility property used and necessary in rendering service to the public, and to earn a fair and reasonable return upon the value of its property.

SDCL § 49-31-1(18). The Commission should find that if it sets a rate in response to Northern Valley's Counterclaim Count II, it must do so based on rate of return regulation, not Sprint's revenues.[6]

The only other alternative to rate of return regulation is price regulation. The Legislature established five factors for the Commission to consider when determining a fair and reasonable price of a "noncompetitive telecommunications service which is not based on the rate of return regulation": (1) "the price of alternative services," (2) "the overall market for the service," (3) "the affordability of the price for the service in the market it is offered," (4) "the impact of the price of the service on the commitment to preserve affordable universal service," and (5) "the fully allocated cost of providing the service." SDCL § 49-31-1.4. "In order to set a 'fair and reasonable price,' the PUC is *required* to 'determine and consider' [these] five factors." *In re Establishment of Switched Access Rates for U.S. West Commc'ns, Inc.*, 2000 SD 140, ¶ 19, 618 N.W.2d 847, 851 (emphasis in original).[7] The analysis is thus focused on the market and the costs of the providing carrier. None of these five factors, nor other Commission rules, allows the Commission to consider the gross revenues or profits one customer would obtain as a result of purchasing the service.

Not surprisingly, Northern Valley cites no state statute or regulation that empowers the Commission to set a regulated rate for Northern Valley by sifting through revenue and profit

[6]This issue is addressed further in Sprint's Memorandum in Support of its Motion for Summary Judgment.

[7]In that case, the Commission had acted under SDCL § 49-31-4.1 to impose price regulation rather than rate of return regulation.

information from one potential customer. Instead, Northern Valley cites to one FCC order and one court case, neither of which advances its case. In *In re Petitions of Sprint PCS & AT&T Corp.* (discussed at Northern Valley Mem., pp. 16-17), the FCC held that AT&T was not required to pay access charges outside the scope of a filed tariff. Declaratory Ruling, 17 FCC Rcd. 13192, 2002 WL 1438578, ¶¶ 1, 9 (2002). The FCC sent the case back to the court to decide whether there was a contract that justified the billing in question. *Id.*Northern Valley claims that the FCC said LEC rates are "imputed into IXC rates," and implies that this FCC pronouncement is relevant to the meaning of SDCL § 49-31-31. Northern Valley Mem., pp. 16-17. Northern Valley's argument is remarkable because (1) the cited paragraph does not say LEC rates are imputed into IXC rates; LEC rates were not in any way at issue (*id.* ¶ 15), (2) the cited paragraph actually says it is "unlikely that an IXC that does not pay access charges [that are not due] somehow 'overcharges' its customers" (*id.*), which undermines Northern Valley's argument, and (3) Northern Valley relies on an irrelevant and misquoted 2000 FCC order to establish the meaning of a South Dakota statute last amended by the Legislature in 1987.[8]

Manhattan Telecommunications Corp. v. Global NAPS, Inc., No. 08 Civ. 3829, 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010) (discussed at Northern Valley Mem., p. 17) is similarly damaging to Northern Valley's position. Northern Valley notes that the Court considered revenue information in the absence of an applicable tariff, but fails to explain that the Court did so only for purposes of adjudicating an unjust enrichment claim. *Id.* at * 4 ("The measure of damages on an unjust enrichment claim is the reasonable value of benefit conferred on Global by

[8]And, when faced with this question directly, the FCC stated: "Whether the IXC's revenues for a call are more or less than its cost of terminating the call is not at issue. The question is whether just and reasonable rates are being charged for the provision of interstate switched access services." *See* 47 U.S.C. § 201(b). *CAF Order*, ¶ 663 n.1090.

the performance of MetTel's termination services."). If the Commission follows *Manhattan*, it will let a Court address discovery regarding the litigation of unjust enrichment issues.

E. "Statements Against Interest" Are Not Automatically Relevant

Northern Valley argues certain information is discoverable because it will lead to admissible "statements against interest." *See, e.g.*, Northern Valley Mem., pp. 13, 25. These assertions are based on a fundamental misunderstanding of the rules of evidence. Because such statements are not automatically admissible, they are not automatically discoverable.

In order to be admissible at trial, statements must be relevant. SDCL § 19-12-2. Evidence is relevant only if it has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." SDCL § 19-12-1. Therefore, any statement, whether or not it is a "statement against interest," must be relevant to be admissible.

Northern Valley does not cite any rule that makes alleged "statements against interest" automatically admissible, and therefore discoverable. The rules do refer to the concept of a "party admission," but that is an exception to the hearsay rule – a relevant party admission is not hearsay, and can be a statement offered against that party. SDCL §§ 19-16-1 & 19-16-3. The rules also refer to an "admission against interest," which (again) is an exception to the hearsay rule, and applies only if the person speaking is unavailable at trial. SDCL § 19-16-32.

Northern Valley's repetition of the phrase "statement against interest" accomplishes nothing on this motion, because no rule of evidence makes such statements relevant or automatically discoverable. To the contrary, unless the subject matter of such an alleged admission is relevant, and until the statement is offered at trial, these exceptions to the hearsay rule do not even come into play. The Commission should reject Northern Valley's attempt to sidestep relevance based on a misunderstanding of the Rules of Evidence.

II. DISCOVERY REQUESTS

A. Interrogatories No. 1 and 2 (Broad Contention Interrogatories)[9]

Northern Valley's Interrogatories Nos. 1 and 2 are contention interrogatories that ask Sprint to marshal and present all evidence it has regarding Northern Valley's attempt to collect its tariffed charges. Northern Valley's motion to compel responses to Interrogatories Nos. 1 and 2 should be denied for four reasons: (1) as written, the interrogatories are overly broad and unduly burdensome; (2) the interrogatories threaten Sprint's privilege regarding its legal strategies, theories, and attorneys' thinking; (3) Northern Valley will receive prefiled testimony that will contain this information; and (4) Sprint has told Northern Valley that it is basing its case on discovery received from Northern Valley and CCCs, not facts of which it has special knowledge.

1. These interrogatories are overbroad and unduly burdensome

Although contention interrogatories are not always overly broad or burdensome, these interrogatories ask Sprint to provide its entire prefiled case in a discovery response. Both Interrogatories Nos. 1 and 2 ask Sprint to "state all factual and legal bases" upon which Sprint supports its assertions about CCCs' "end user" status and applicability of tariffs. "In general, a contention interrogatory will be considered overly broad and unduly burdensome if it seeks 'all facts' supporting a claim or defense, such that the answering party is required to provide a narrative account of its case." *Turner v. Moen Steel Erection, Inc.*, No. 8:06-cv-227, Order on Discovery Motions, 2006 WL 3392206, at *4 (D. Neb., Oct. 5, 2006) (emphasis added) (citing *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006) (internal quotations omitted). Northern Valley can certainly ask Sprint to explain what its contentions are, but it should not be allowed to ask Sprint to marshal its entire case.

[9]These questions and Sprint's responses are at pages 8-11 of Northern Valley's Memorandum.

2. These interrogatories threaten privilege

By asking for "all factual and legal bases" supporting the ultimate issues, Interrogatories Nos. 1 and 2 threaten the privilege that protects Sprint's legal strategies, theories of the case, and its attorneys' thinking on how to prove Sprint's claims. In essence, Northern Valley is asking Sprint to disclose its strategy of exactly how it will present and argue its claims before the Commission.

However, trial strategies are privileged (*United States v. Salamanca*, 244 F. Supp. 2d 1023, 1026 (D.S.D. 2003)), and a party cannot use contention interrogatories to force another party to disclose its strategy and assist the requesting party in preparing its case.*Poulos v. Summit Hotel Props., LLC*, No. CIV 09-4062-RAL, Opinion and Order Denying Defendants' Motion to Compel, 2010 WL 2640394, at *1-2 (D.S.D. July 1, 2010) (denying a motion to compel responses to contention interrogatories because they asked the plaintiff to assist the defendants in preparing their case). *See also, Phillips v. City of New York*, 230 F.R.D. 369, 370 (S.D.N.Y. 2005) (finding "no basis in law to support a determination that detailed disclosure of defendant's theory of their cross-claim in the form [the requesting party] requests by way of contention interrogatories is compelled by the Federal Rules or any applicable law"). *See also Breeland v. Yale & Towne Mfg. Co.*, 26 F.R.D. 119, 120 (E.D.N.Y. 1960) ("A litigant may not compel his adversary to go to work for him."). It is not Sprint's duty to provide Northern Valley with privileged strategy information so that Northern Valley can prepare its case.

3. These interrogatories are unnecessary because testimony will be prefiled

Furthermore, when testimony will be prefiled, broad contention interrogatories that ask for "all facts" on which a party will rely undermine the prefiling process. Northern Valley cites to caselaw for the proposition that contention interrogatories are beneficial because parties "are

entitled to know with some degree of precision what the factual content of the charges made against them is." *Harlem River Consumers Co-op., Inc. v. Associated Grocers of Harlem, Inc.*, 64 F.R.D. 459, 463 (S.D.N.Y. 1974) (internal quotations omitted) (discussed at Northern Valley Mem., pp. 9-10). To that end, the Supreme Court has recognized discovery "simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise" at trial. *Hickman v. Taylor*, 329 U.S. at 507.

However, these concerns are alleviated here because Sprint's testimony will be filed and served not just before the hearing, but before Northern Valley files its rebuttal testimony.[10] There is no chance Northern Valley will be caught by any evidentiary surprises at trial, nor is it fair for Sprint to be compelled to essentially prepare its entire direct case before the deadline for doing so as set by the Commission.

4. Sprint's responses establish that Sprint is relying on discovery received from Northern Valley and CCCs, not internal facts

Finally, Sprint did provide a substantive response to Interrogatories Nos. 1 and 2 that made clear it will rely on facts obtained in discovery from both Northern Valley and Northern Valley's CCC partners. *See* Northern Valley Mem., pp. 8, 10-11. Northern Valley already has access to all of those facts. "In response to contention interrogatories, a party is not required to review documents that have already been produced nor will a party be required to identify witnesses and documents where that information will subsequently be supplied in a pretrial order." *Pasternak v. Dow Kim*, No. 10 Civ. 5045, 2011 WL 4552389, at *3 (S.D.N.Y. Sept. 28, 2011). *See also Tribune Co. v. Purcigliotti*, No. 93 Civ. 7222, 1997 WL 540810, at *2 (S.D.N.Y.

[10]Although there is not currently a procedural schedule in place, the schedule agreed to previously allowed for multiple rounds of testimony, and for discovery to be served following the submission of Sprint's prefiled testimony. *See* Sept. 28, 2011 Order, ¶ 7(b). Northern Valley's statement on page 9 of its Memorandum that there can be no discovery following submission of testimony is incorrect.

Sept. 3, 1997) ("Plaintiffs will not be required to parse through documents that have already been produced to defendants, which defendants are in a position to review themselves, in order to explain the obvious.").

In some litigation, a party may rely on facts that only it knows, such as facts about its own business, or facts developed internally. That is not the case here. The information Sprint will rely on at hearing to demonstrate the CCCs are not legitimate local exchange service customers, and that intrastate tariff charges do not apply, is information that Northern Valley is aware of because it is Northern Valley's own conduct, or the conduct of its CCC partners, all of which is part of the discovery record. *See, e.g., supra* pp. 9-10 (providing examples of some information Sprint will rely on). Northern Valley has access to all written discovery, and was represented at all depositions. Northern Valley does not need to serve a discovery request to understand that Sprint may rely on facts of which Northern Valley is already aware.

B. Interrogatory No. 4 and Document Request No. 15 (Sprint's Payments to Other LECs)[11]

Interrogatory No. 4 asks Sprint to identify all LECs to whom Sprint pays, or has paid, terminating switched access charges associated with calls made to CCCs. Northern Valley asks that Sprint identify each payment, the time period during which each payment was made, the basis for each payment, and whether Sprint has objected to such charges or took action to recoup any of these payments.

Document Request No. 15 requests that Sprint produce all documents that refer to, relate to, or identify any instances in which Sprint has paid terminating access charges to any LEC that serves calling service providers, including all documents relating to Sprint's validation that such charges were owed, and any analysis of relevant tariffs. Stated simply, Northern Valley seeks to

[11]These questions and Sprint's responses are at pages 11-12 of Northern Valley's Memorandum.

determine whether Sprint has paid access charges to other LECs for calls to CCCs. Northern Valley's request should be denied because the requested information is not calculated to lead to the discovery of admissible evidence, statements against interest are not automatically relevant, similar requests have been denied in Minnesota, and it would be unduly burdensome for Sprint to respond to these requests as written.

1. The requested information is not calculated to lead to the discovery of admissible evidence

Northern Valley's attempt to obtain information about Sprint's relationships with other LECs serving CCCs under other arrangements, in other states, and on different facts, should be rejected. Northern Valley argues that this requested information may shed light on whether Sprint's withholding "is actually premised on a good faith belief that the practices are improper under state law" or are instead pretextual. Northern Valley Mem., p. 12. Yet Northern Valley fails to identify any element of any claim or defense that could possibly turn on whether Sprint acted in "good faith." Sprint's motives or business practices with respect to other LECs can have no impact on the meaning of South Dakota law, the Commission's interpretation of Northern Valley's intrastate tariff, or its application of the facts in this case to that tariff language. Nor could Sprint's payments of access charges to other LECs (if any occurred) be used by the Commission to set a rate under SDCL § 49-13-13.

Northern Valley's argument that it wants to litigate Sprint's motives is especially farfetched given that Sprint has been disputing and withholding payment since 2007, and has been actively involved in traffic pumping litigation all over the country. Further, it is quite a stretch for Northern Valley to suggest that traffic pumping disputes are pretextual when those

disputes have led to IXC victories in Iowa,[12] against an Iowa LEC before the FCC,[13] and against Northern Valley itself,[14] and have caused the FCC to take action to abolish this bad business practice.[15] Moreover, even if "bad faith" was relevant, the fact that Sprint has evidence showing Northern Valley **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** should put to bed any allegations that Sprint's disputes were filed in bad faith.

2. Statements against interest are not automatically admissible

Northern Valley's statement that Sprint's payment of other carriers would be "likely admissible as a statement against interest" (Northern Valley Mem., p. 13) is, as noted above, based on a fundamental misunderstanding of the proper scope of discovery and the rules of evidence. *Supra* p. 16.

3. Sprint has answered the question with respect to South Dakota

To the extent these requests have any relevance, Sprint has answered with respect to

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[12] *Qwest Commc'ns Corp. v. Superior Tel. Coop.*, No. FCV-07-2, 2009 WL 3052208, at *32 (IUB Sep. 21, 2009) ("*IUB Order*"), *recon. denied*, 2011 WL 459685 (IUB Feb. 4, 2011) (finding calls not subject to tariffed access charges based on LEC and CCC business practices), *affirmed on judicial review sub nom., Farmers Tel. Co. of Riceville v. Iowa Util. Bd.*, 5771 CVCV 8561 (Polk County Dist. Ct. Oct. 12, 2011).

[13] *Qwest Commc'ns Corp. v. Farmers & Merchants Mut. Tel. Co.*, No. EB-07-MD-001, 2009 WL 4073944 (Nov. 25, 2009) ("*Farmers II*") (finding calls not subject to tariffed access charges based on LEC and CCC business practices), *aff'd, Farmers & Merchants Mut. Tel. v. FCC*, No. 10-1093, 2011 WL 6848437 (D.C. Cir. Dec. 30, 2011).

[14] *In the Matter of Qwest Commc'ns Co., LLC v. N. Valley Commc'ns*, LLC, FCC 11-87, 26 FCC Rcd. 8332, 2011 WL 2258081 (F.C.C. June 7, 2011) (rejecting tariff that attempted to impose access charges on calls not delivered to end users); *Sprint Commc'ns Co. v. Northern Valley Commc'ns LLC*, 2011 WL 2838100, 26 FCC Rcd. 10780 Order (July 18, 2011) (finding tariff impermissibly vague).

[15] *CAF Order*, ¶¶ 657-665 (access stimulation leads to unjust rates, harms consumers, and harms competition).

South Dakota that it does not knowingly pay for pumped traffic. *See* Sprint's Responses to Interrogatory No. 4; Affidavit of Regina Roach (March 12, 2012) ("Roach Aff.") ¶ 5. The Commission should find Sprint has responded fully with respect to South Dakota, and deny Northern Valley's motion to go require responses on a nationwide basis.

4. Similar requests have been denied in Minnesota

A similar request has been addressed twice in Minnesota in Sprint's litigation with Tekstar. In a federal court case that involved equitable claims, Tekstar served broad discovery seeking information about Sprint's disputes with other traffic pumpers. *See* Schenkenberg Aff. ¶ 15 and Ex. L, p. 9 of 19 (Interrogatory No. 3). That request was similar to Northern Valley's Interrogatory No. 4 and Document Request No. 15. Tekstar's request for this discovery was denied almost in full:

> Given the Record presented, we agree with the Defendant. We find that almost all of the Plaintiff's discovery encompasses a wide swath of information which the Plaintiff has failed to demonstrate has relevance to any claim or defense. Nor has the Plaintiff demonstrated that the minimally relevant discovery, which may have some relevance, outweighs the Defendant's demonstrated burden in responding to those requests. Indeed, the Defendant advises that to answer the Plaintiff's discovery would require it to locate numerous documents, that are scattered throughout its numerous offices, to parse its records, to create information that it does not maintain in the regular course of its business, and to copy and submit thousands of pages of documents to the Plaintiff with no correlating relevance to the issues in this case.

Schenkenberg Aff. Ex. J (Fed. Ct. Order on Tekstar Motion to Compel), pp. 6-7. The Court required Sprint to produce its settlement agreements with other LECs, but only because of Tekstar's equitable claims and defenses. Schenkenberg Aff. Ex. J (Fed. Ct. Order on Tekstar Motion to Compel), p. 8. As noted above, Northern Valley's equitable claims are pending in court, not before the Commission, and do not provide support for Northern Valley's Motion to Compel filed with the Commission.

In 2011, Tekstar filed a motion to compel some of the same information in a case pending before the Minnesota PUC. The claims and defenses in that case are similar to those in this case,[16] and the ALJ recognized that, based on the claims and defenses, Sprint's relationships with other LECs are not at issue:

> The Administrative Law Judge concludes that the focus of this contested case is properly on Tekstar's practices and whether the access charges in question comply with Tekstar's intrastate tariff and with laws and rules governing the provision of local exchange service. If the disputed charges do apply, Tekstar has requested that the Commission require Qwest and Sprint to pay them, and in that event the Department seeks an analysis of whether the access charges themselves are just and reasonable. This does not open the door to broad-ranging discovery concerning Sprint's pricing plans for long-distance service or its revenues from different types of service offerings or from different types of calls (pumped vs. unpumped). Moreover, Sprint has established that the requested discovery is overbroad, burdensome, unreasonable and oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the information sought.[16] Tekstar's motion to compel responses to Information Request Nos. 12, 23, 45, and 46 is accordingly denied.
>
> [16] *See* Affidavits of Marybeth Banks (2009 and 2011); Affidavits of Bill Davison (2009 and 2011); Affidavits of Karine Hellwig (2009 and 2011).

Schenkenberg Aff. Ex. K (MPUC Order on Tekstar Motion to Compel), p. 8 (emphasis added). The same result is warranted here.

5. It would be unduly burdensome for Sprint to respond to these requests as written

Sprint has previously objected to these requests as unduly burdensome because, as written, they could have arguably required Sprint to provide documents, information and analysis with respect to situations in which Sprint unknowingly paid for pumped traffic prior to identifying it as such and filing a charge. Sprint's counsel has confirmed with Northern Valley's counsel that it does not seek such information. *See* Roach Aff. ¶ 8. With that limitation, Sprint withdraws its burdensome objection.

[16] As in South Dakota, the Minnesota PUC cannot adjudicate equitable claims.

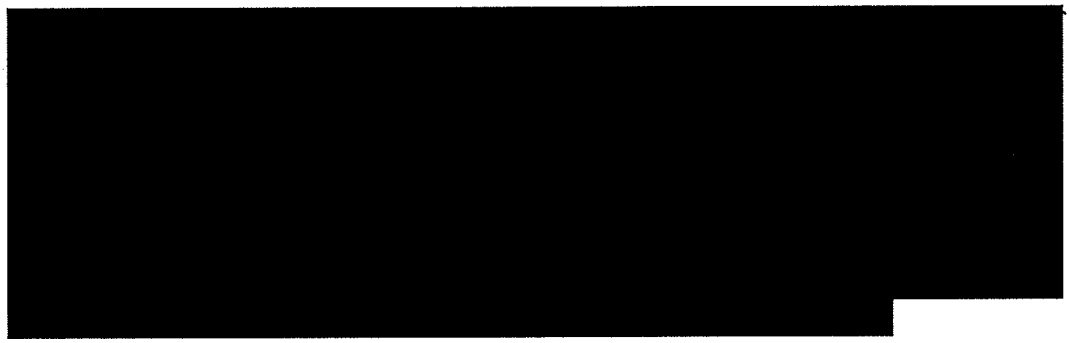
C. Interrogatory No. 7 (Call and Revenue Analysis)[17]

Interrogatory No. 7 asks Sprint to create a data analysis showing the number of interstate and intrastate calls, by month, delivered to a list of identified telephone numbers, and identifying the gross revenues associated with all of those calls. Northern Valley's Motion to Compel should be denied.

1. What is good for the goose is good for the gander

Northern Valley's Motion to Compel a response to Interrogatory No. 7 should be denied based on the maxim, "what is good for the goose is good for the gander." Earlier in this case, Sprint asked Northern Valley to identify minutes of use Sprint had delivered, broken down by jurisdiction and CCC, and Northern Valley responded:

[BEGIN CONFIDENTIAL]



[END CONFIDENTIAL]

Schenkenberg Aff. Ex. M (Resp. to IR 4), p. 7 (emphasis added).

Likewise, Sprint does not maintain the information requested in Interrogatory No. 7 in the form requested. Affidavit of Karine Hellwig ("Hellwig Aff.) ¶ 3. As such, and as agreed to by Northern Valley, Sprint is not required to complete a study to respond to this request.

[17]This question and Sprint's response is at pages 13-14 of Northern Valley's Memorandum.

2. The requested revenue information is not calculated to lead to the discovery of admissible evidence

Sprint has already explained that Sprint's revenue information does not bear on any claims or defenses in this case. *Supra* pp. 7-16.

A recent decision in an Iowa traffic pumping case supports the notion that revenue information bears (if at all) only on equitable claims. *In re Tier 1 JEG Telecomm'ns Cases, 4:07-cv-00043, 3:09-cv-0055 et al.*, Ruling on Motion to Compel (S.D. Iowa) ("*Tier 1 Order on Motion to Compel*") (Schenkenberg Aff. Ex. N). There, several LECs sought revenue information from Verizon, an IXC. In responding to Verizon's relevance objection, the Court acknowledged a prior Iowa ruling finding revenue information irrelevant to questions of tariff validity. *Id.* at 3. Yet the court noted that this case (unlike the earlier case) included an unjust enrichment claim, which changed the analysis. *Id.* at 3. As stated by the court, the revenue information was discoverable because the "unjust enrichment claim remains in the case." *Id.* at 4.[18]

Here, the Commission has dismissed Northern Valley's equitable claims and has no authority to litigate or adjudicate equitable claims. If the Commission follows the logic of the *Tier 1 Order on Motion to Compel*, the Commission should deny Northern Valley's motion on Interrogatory No. 7.

3. It would be unduly burdensome to require Sprint to collect this information

Even if there was any relevance to the requested information, the burden associated with complying with the request is extraordinary, especially in light of the small amount of Northern Valley's intrastate claim. The Commission should limit this discovery, including discovery of

[18]Sprint does not concede this ruling is correct.

electronically stored information, because it is unduly burdensome and expensive. SDCL § 15-6-26(b)(1)(A).

With respect to minutes of use, Northern Valley is asking Sprint to compile data reports on a month-by-month basis, by terminating telephone number. Yet Sprint's long-distance services are billed and tracked based on the origination point of the service. Hellwig Aff. ¶ 4. Sprint does not maintain minute-of-use information for its long-distance services by termination points. To provide such information, Sprint would have to extract the data from its records. The level of effort for Sprint to extract termination minutes by geographic area would be significant in effort and cost. Hellwig Aff. ¶ 4.

The request asks Sprint for information that is more than five years old. Sprint has an active database against which it may be able to run queries on minutes of use going back six months, but obtaining terminating minutes of use by geography for any older period would require turning to archived material no longer stored in the active database or to call detail records. Hellwig Aff. ¶ 5. For the archived material, unarchiving this amount of detailed information is extremely time consuming and would force Sprint to incur unexpected information technology costs and, possibly, additional labor costs. Hellwig Aff. ¶ 5. Moreover, the archives for the minute-of-use database themselves only go back an additional seven months, totaling 13 months of available minute data, and would thus be insufficient to fulfill the requested inquiry. If call detail records were used instead, extracting minutes of use to a geographical area from billings of records of individual customers would require not only work, but substantial amounts of expensive computer time. The call detail records older than 18 months would need to be unarchived to complete the request. Hellwig Aff. ¶ 5.

With respect to revenues, Sprint does not maintain revenue information for its long-distance services by termination points. Hellwig Aff. ¶ 6. Calculating revenues for specific calls would be even more difficult than calculating minutes of use. Hellwig Aff. ¶ 6. In order to attempt to associate revenue with terminating location, after determining the minutes of use terminating to the numbers identified (as described above), Sprint would need to determine which of those minutes were associated with particular customers, which calling plans those customers were on at each point in time, and the rates applicable to the minutes. The bulk of Sprint's retail customers are on unlimited plans from which Sprint derives no revenue for each minute of use, much less minutes to particular terminating points. Hellwig Aff. ¶ 6. Other customers are on plans in which they receive a certain number of minutes "in plan" and then pay only for minutes above that amount. Hellwig Aff. ¶ 6. For these customers, Sprint would need to determine which calls exceeded the customers' plan minutes and how its revenue should be allocated. Hellwig Aff. ¶ 6. Still other customers are billed per-minute rates, which can vary over time. Hellwig Aff. ¶ 6. Attempting to determine what revenues were associated with calls terminating to specific numbers for any time period, much less a period of more than six years, would be an extremely complicated and burdensome task that would need to be performed individually for all three-million customers for each month covered in this data request. *Id.*

As noted above, the federal court in Minnesota and the ALJ in Minnesota have found this request to impose an undue burden on Sprint. Schenkenberg Aff. Ex. J (Fed. Ct. Order on Tekstar Motion to Compel), p. 6 ("[N]or has the Plaintiff demonstrated that the minimally relevant discovery, which may have some relevance, outweighs the Defendant's demonstrated burden in responding to those requests,"); Schenkenberg Aff. Ex. K (MPUC Order on Tekstar

Motion to Compel), p. 8 ("Sprint has established that the requested discovery is overbroad, burdensome, unreasonable and oppressive.").[19]

Finally, Northern Valley may cite to the *Tier 1 Order on Motion to Compel*, and point out that court rejected Verizon's claim of undue burden. Schenkenberg Aff. Ex. N, p. 2. However, that ruling is not relevant here, as Verizon failed to submit any affidavits supporting its claim of burden. *Id.* Sprint's affidavits have twice carried the day in Minnesota, and should here as well.

4. Northern Valley's Motion with Respect to Disputed Call Volumes is Moot

On page 15 of its Memorandum Northern Valley argues that Sprint should identify the volume of intrastate traffic at issue in this case. During briefing, Sprint's counsel advised Northern Valley's counsel that Sprint did not have this information. Schenkenberg Aff. ¶ 22. Just before this response was filed, Northern Valley responded by identifying that information for Sprint. *Id.* As such, Northern Valley's motion on this point is moot.

5. Sprint's objections were timely

On page 14 of its Memorandum, Northern Valley argues that Sprint waived its burdensomeness objection by providing additional factual information to support its objection when it supplemented its response in November. Northern Valley cites to no law, much less any South Dakota law, to support that proposition. In fact, the cases Northern Valley cites establish no such waiver. Instead, two cases stand for the proposition that a party cannot succeed on a motion for protection from discovery (either through a protective order or a motion to quash)

[19]On p. 16 of its Memorandum, Northern Valley cites to *Harlem River* for the proposition that a plaintiff must accept a level of burden with respect to claims "raised in their complaint." Here, Northern Valley argues Sprint's revenue information is necessary to pursue <u>its own</u> Counterclaim Count II. If that proposition were accepted, *Harlem River* would support an order compelling Northern Valley to bear any costs imposed on Sprint to comply with this burdensome discovery.

when the information sought is relevant and when the party opposing the discovery fails to provide substantive objections. *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1484-85 (5th Cir. 1990) (plaintiff could not succeed on a motion for protective order when the information sought was relevant and the plaintiff failed to provide providing bases for his objections. His "willful" and "bad faith" failure to respond to discovery requests was sufficient grounds to dismiss the case); *Hodgdon v. Nw. University*, 245 F.R.D. 337, 341-45 & n.4 (N.D. Ill. 2007) (motions to quash and for a protective order denied because the information sought was relevant and because, as noted in a footnote, general boilerplate objections are insufficient). These cases are off point, however, because (1) Northern Valley's discovery requests extend beyond the scope of relevancy and (2) Sprint has provided, and continues to provide, substantive objections – now supported by affidavits – to Northern Valley's discovery requests. The third case, *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399 (S.D. Fla. 2008), was a *sua sponte* order reminding parties that, under the Federal Rules of Civil Procedure and local rules, parties objecting to discovery must provide more than boilerplate objections. Nothing in this order even alludes to a notion of waiver. Instead, Sprint did what litigants often do throughout the meet-and-confer process – it provided additional factual information, allowing Northern Valley to evaluate the claim of burden. And, while Sprint provided with great specificity a showing that it does not have the information and cannot reasonably develop the information as requested, Northern Valley has failed to moderate its request in any way.

Moreover, it is important to recall that Sprint's supplemental discovery response in December of 2011 that contained this additional factual information was submitted to Northern Valley more than a month before the Commission even accepted Northern Valley's Counterclaim. When Sprint submitted its original objection to this request, its primary objection

was relevance. That objection was essentially sustained when the Commission dismissed Northern Valley's crossclaim in September of 2011. Following Northern Valley's motion for leave to file a new counterclaim, it was perfectly appropriate for Sprint to assert additional objections to the extent Northern Valley intended that prior discovery apply to the later claim. The Commission should thus reject Northern Valley's suggestion that Sprint somehow waived its burdensomeness objection.

D. Interrogatory No. 8, Document Requests Nos. 26, 35, and 36, Interrogatory No. 9, and Document Request No. 23 (Least Cost Routing Questions)[20]

1. The requested information is not calculated to lead to the discovery of admissible evidence

The next category of questions relates to Sprint's business relationships with other IXCs. Northern Valley seeks information on the amount of traffic, the relationships, and the revenues generated from IXCs that have handed calls to Sprint for delivery to Northern Valley under Least Cost Routing ("LCR") arrangements.

As with many of its requests, Northern Valley fails to tie this information to a claim or defense in this case. If the tariffs apply, Sprint will be obligated to pay the tariff amounts, regardless of whether it obtains some revenue from some IXCs on some calls. And, if the tariffs do not apply, Sprint's relationship with IXCs cannot change that result. In addition, Northern Valley's continued belief that Sprint's revenues can form the basis for the Commission's decision to set a statutory rate applicable to all traffic delivered to Northern Valley is without support in law. *See supra* pp. 7-16.

[20]These questions and Sprint's responses are at pages 19-20 of Northern Valley's Memorandum.

The *Tier 1 Order on Motion to Compel* discussed above addressed requests for Verizon's least cost routing information. Schenkenberg Aff. Ex. N, pp. 4-7. As with revenue information, the court found the requested information discoverable only with respect to equitable claims:

> Verizon's payment of LCR charges to IXCs has little to do with tariff invalidity . . . . If compensation for the movants' services was contemplated as a component of the LCR payments by Verizon, that arguably lends support to movants' equitable claims for the services they provided.

Id. p. 7. Again, Northern Valley has no equitable claims pending before the Commission, and, therefore, its motion to compel should be denied.

2. Undue burden[21]

Even if there was any relevance to the requested information, the Commission should deny the motion to the burden associated with complying with these requests, especially in light of the small amount of the intrastate claim. The Commission should limit this discovery, including discovery of electronically stored information, because it is unduly burdensome and expensive. SDCL § 15-6-26(b)(1)(A).

First of all, with Document Requests 26 and 35 ask for documents that either "identify" or "demonstrate" total call volumes or revenue numbers. Sprint has no documents that either contain this information or would allow Northern Valley to determine it. Affidavit of Bruce R. Tillotson ("Tillotson Aff.") ¶ 10.

The remaining interrogatories and requests ask for information on revenues and price increases. Bruce Tillotson, a billing analyst, explains that Sprint does not have the revenue information requested for any month. That information is not tracked, and would need to be

[21]Northern Valley erroneously states that Sprint failed to object to Interrogatory No. 8 as being unduly burdensome. Northern Valley Mem., p. 20. This is simply untrue. Sprint explicitly stated that it objected to Interrogatory No. 8 on several grounds, including the fact that the question was "unduly burdensome." Northern Valley Mem., p. 19.

developed. Tillotson Aff. ¶ 4.[22] Doing so would require Sprint to spend approximately 120 (one hundred twenty) hours of time, and at the end of the process Sprint would be able to show the number of wholesale minutes delivered to Northern Valley. Tillotson Aff. ¶ 7. For a fraction of these customers, the report would show amounts billed and attributable to Northern Valley, but for the remainder, the billing information would show composite rates that would not be specific to Northern Valley's network functions. Tillotson Aff. ¶ 8. In neither of these instances would the summary show revenues received, which is a data point Mr. Tillotson does not believe could be generated. Tillotson Aff. ¶ 9.

The Commission should deny Northern Valley's motion with respect to the least cost routing questions.[23]

E. Interrogatory No. 13 (Expert Discovery)[24]

Like Interrogatories Nos. 1 and 2, Interrogatory No. 13 is designed to obtain information that Northern Valley will already obtain in prefiled testimony, filed in accordance with the Commission's procedural schedule. Under the South Dakota Rules, this kind of expert information need not be provided unless and until the date set by the Court for provision of expert reports. *See, e.g.*, SDCL § 15-6-26(b)(4)(B) (protecting from disclosure any draft reports, regardless of the form in which the draft is recorded). The equivalent, here, will be prefiled

[22] As noted *supra* p. 25, Sprint objects to developing analyses it does not have, and Northern Valley agrees that such objection is valid.

[23] To the extent Northern Valley is asking Sprint to produce documents relative to rate increases, thereby expanding the custodian and search term list, Sprint refers the Commission to its argument *infra* pp. 36-37. Sprint has already produced documents related to Northern Valley generated from a very large (and already burdensome) custodian list. No further expansion of the custodian or search term lists is warranted.

[24] Interrogatory No. 13 and Sprint's response are at page 22 of Northern Valley's Memorandum.

testimony. Sprint will comply with the letter and the spirit of the South Dakota Rules of Civil Procedure by including all of the requested information within its expert's prefiled testimony.

This is exactly the way Northern Valley responded to Sprint's expert discovery – by stating that expert discovery would follow the Commission's procedural schedule. Schenkenberg Aff. Ex. P (responses to Document Requests 43-45). In addition, Sprint has fully responded to the question as written. It has provided its expert's name and it has stated that, at the present time, the contents of any expert testimony have not been identified. Again, this information will be known and disclosed when prefiled testimony is due.[25] The Commission should deny Northern Valley's motion.

F. Document Request No. 1 (All Internal and Documents Referencing Traffic Pumping)[26]

Sprint has been involved in many of traffic pumping cases throughout the country for the past five years, and has been involved in providing advocacy before the FCC and other bodies in an attempt to effect regulatory change to stop this practice. Northern Valley's Document request No. 1 asks Sprint to produce every document it has for the last 7 years that in any way refers to

[25]Northern Valley asks the Commission to require Sprint to make Mr. Wood available for deposition. The South Dakota rules of civil procedure provide for "discovery of facts known and opinions held by experts" through interrogatories. SDCL § 15-6-26(b)(4). Depositions are not automatically allowed, but upon motion, the Commission "may order further discovery by other means." SDCL § 15-6-26(b)(4)(A)(ii). Such discovery is "subject to such restrictions as to scope and such provisions, pursuant to [the provision regarding trial preparation protection for communication between a party's attorney and expert witness], concerning fees and expenses as the court may deem appropriate." SDCL § 15-6-26(b)(4)(A)(ii). If the Commission were to order a deposition, Northern Valley would be required to pay Mr. Wood a reasonable fee for his time. SDCL § 15-6-26(b)(4)(E)(ii). At this point, a request for expert depositions is premature, and should be reconsidered after prefiled testimony is submitted and follow-up interrogatories are answered. At that point, the parties can negotiate about the need for, and the allocation of costs for any expert depositions.

[26]This request and Sprint's response is at page 23 of Northern Valley's Memorandum.

the practice of traffic pumping, traffic pumping cases it has been involved in, and any CCC. The scope of this request is mind-boggling.

1. Sprint has produced all internal, non-privileged documents that relate to its statements about Northern Valley, SDN, Splitrock, and Sancom

As an initial matter, Northern Valley already has been provided with a substantial amount of information within the scope of this request. As described in the affidavit of Sonya Thornton, Sprint searched the computers of 17 custodians and produced documents that related to Northern Valley. Affidavit of Sonya Thornton ("Thornton Aff.") ¶¶ 4-6. In addition, Northern Valley has received documents related to Sprint's dispute with SDN, and related to its disputes with Sancom and Splitrock when they were still in the case. Schenkenberg Aff. ¶ 21. Northern Valley thus has thousands of pages of documents it can use to make its case, and has made no showing of good cause to obtain more than it has.

2. The additional requested documents are not calculated to lead to the discovery of admissible evidence

Northern Valley (again) declines to identify any claim or defense that could possibly turn on Sprint's internal or external statements about other carriers' traffic pumping. Instead, Northern Valley poses a rhetorical question:

> If Sprint asserts that its internal communications regarding the very conduct that it contends excuses it from paying Northern valley's access charges are not relevant to this case, then it begs the fundamental question of what Sprint contends is relevant?

Northern Valley Mem., p. 24.

First of all, as noted above, Sprint has produced its internal statements regarding Northern Valley, so it is inaccurate for Northern Valley to suggest that Sprint failed to produce statements regarding the conduct at issue. Sprint could pose its own question:

> Having received all internal statements about Northern Valley, Sancom, Splitrock, and SDN, what possible use could Northern Valley make of internal and external statements about dozens more traffic pumpers throughout the country?

Second, Sprint has fully explained that the focus of this case is on Northern Valley's business practices, and, under Counterclaim Count II, Northern Valley's costs. *Supra* pp. 9-16. There is no way Sprint's internal or external statements about other parties are relevant to the claims or defenses in this matter.

3. Responding to this request would be unduly burdensome

The burden and expense imposed by producing all internal and external communications related to traffic pumping for a six-year period is enormous and completely disproportionate to any "likely benefit" the production may have. As set forth in Ms. Thornton's Declaration, expanding a search term list to capture all documents related to conference call and chat traffic would generate for more than **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**.

And, if Northern Valley is attempting to obtain information from other Sprint traffic pumping litigation, that production would encompass an enormous amount of material. For example, Sprint estimates that in its litigation with Tekstar Communications in Minnesota, it has produced or received more than 200,000 pages of documents, it possesses more than 20 deposition transcripts, and its pleadings files contain more than 500 entries. Schenkenberg Aff. ¶ 16. This is just one of the more than 19 court and commission cases Sprint has litigated.

Northern Valley has made no direct assertion that Sprint be required to expand the list of custodians beyond those identified in the federal litigation, and instead suggests it has "questions" about the custodian list. Sprint believes the list of 17 custodians it has identified is

appropriate. To the extent Northern Valley disagrees, Sprint has documented the fact that each additional custodian will increase production costs by approximately $20,000 (twenty thousand dollars). Thornton Aff. ¶ 13. A California court recently adopted a version of the Model Order on E-Discovery in patent cases for a patent infringement case, finding a limit of five custodians represented a reasonable balance between the plaintiff's interest in obtaining information and the huge amount of cost and effort – oftentimes with little benefit – when no such limits apply. *DCG Sys., Inc. v. Checkpoint Techs., LLC*, No. C-11-037892, 2011 WL 5244356, at *2 (N.D. Cal. Nov. 2, 2011). The same reasoning applies here.

G. Document Request No. 34 (Revenue Sharing Agreements)[27]

Northern Valley's Interrogatory No. 34 asks for documents that relate to "revenue sharing agreements that Sprint has with third-party entities in South Dakota."

1. The requested information is not calculated to lead to the discovery of admissible evidence

Northern Valley fails to explain how documents related to Sprint's revenue sharing agreements could be used to establish Sprint's liability under Northern Valley's intrastate tariff, or to set a rate in the event the tariff does not apply. Instead, Northern Valley claims (without citation) that Sprint has alleged revenue sharing is "unlawful." Northern Valley Mem., p. 25. This is inaccurate. Sprint's Third Party Complaint never mentions revenue sharing at all, and Sprint does not believe there is any document in this case in which it has alleged that revenue sharing is *per se* unlawful. It is certainly the case, however, that Northern Valley's revenue sharing with CCC partners can be one factor in determining whether CCCs are legitimate end-user customers of local exchange service as a matter of tariff and applicable law. *See Farmers II*, ¶ 12 (factoring in the existence of revenue sharing in determining that CCCs were not legitimate

[27]This request and Sprint's response is at pages 24-25 of Northern Valley's Memorandum.

end users); *IUB Order*, at *14 (finding revenue sharing should be evaluated on a case by case basis, and Iowa LECs were sharing profits). This fact-specific inquiry into Northern Valley's relationships cannot possibly turn on Sprint's business arrangements with other entities.

In the Tier 1 Iowa case discussed above, the Court denied a motion to compel this kind of revenue information, despite the presence of equitable claims. Schenkenberg Aff. Ex. N, *Tier 1 Order on Motion to Compel*, pp. 7-8:

> The Court views the request as patently overbroad to the extent of taking the request beyond the realm of reasonable evidence to the claims and defenses of the parties. Fed. R. Civ. P. 26(b)(1). Nor is the request reasonably calculated to lead to the discovery of admissible evidence.

Id. at 8. Similar treatment is warranted here.

2. Statements against interest are not automatically discoverable

Northern Valley's statement that Sprint's sharing of revenue would be admissible and discoverable as a statement against interest (Northern Valley Mem., p. 25) is, as noted above, based on a misunderstanding of the rules of evidence and relevance. *Supra* p. 16.

III. SPRINT SHOULD NOT HAVE TO RE-DO ITS FEDERAL COURT PRODUCTION AND REMOVE ALL REDACTIONS

Northern Valley asks Sprint to re-do its Federal Court production so Northern Valley can see irrelevant and non-responsive material. This is yet another example of Northern Valley taking every opportunity it can to try to make this case more expensive and difficult for Sprint, with no corresponding benefit for purposes of the case.

As more fully described below, Sprint's production was prepared for purposes of the earlier federal court case, and Sprint made redactions consistent with the protocol agreed to in that case. In 2011 the parties discussed the issue of redactions as they attempted to negotiate a procedural schedule. When the parties came to impasse the issue was presented to the Commission as being relevant to various large spreadsheets that had been produced to Northern

Valley. *See* Aug. 30, 2011 Hearing Tr. pp. 79-84. Ultimately, the Commission determined that spreadsheets should be produced in native, non-redacted format:

> 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.

Sept. 28, 2011 Order, pp. 6-7 (emphasis added). Sprint has abided by that ruling. Thornton Aff. ¶ 9.

Now, Northern Valley has taken the position that Sprint is required to re-do its entire earlier production and remove redactions (other than for privilege) for all other documents. This is not what is called for by the Commission's prior ruling, would undermine Sprint's compliance with the parties' electronic discovery agreement in the initial federal court case, would be burdensome, and additional work is not necessary for Northern Valley to present relevant evidence with respect to the claims and defenses in the case.

A. Northern Valley has Also Redacted Irrelevant and Nonresponsive Material

As an initial matter, while Northern Valley claims that redacting irrelevant and nonresponsive material is inappropriate, it engaged in this very practice in this case. In fact, after it filed this motion – in March of 2012 -- Northern Valley made a production in which it it redacted transaction line items that were unrelated to the CCC payments on the pages. Schenkenberg Aff. ¶ 23. Sample pages showing those redactions are attached as Exhibit Q. Sprint trusts Northern Valley's representation that the information redacted is irrelevant and non-responsive, and does not object to those redactions. The Commission should require equal treatment, and deny Northern Valley's motion on this point. *See also supra* p. 25 (discussing goose/gander rule).

B. Sprint's Production was Prepared For Purposes of Production in Federal Court

Sprint originally collected and prepared to produce documents to Northern Valley for purposes of the first federal court case, Case No. Civ. 08-1003-KES, pending in Federal Court in the District of South Dakota. Thornton Aff. ¶ 3. At that time, the parties had entered into an agreement regarding the retention, collection and production of electronically stored information ("ESI") for the purpose of that case. A copy of the parties' ESI Agreement is attached as Exhibit A to Ms. Thornton's Affidavit. It provided, in part:

> Electronic spreadsheets should be produced in native format. If any electronic document contains material that is not subject to production, because it contains material protected by the attorney-client privilege, the work product doctrine, or any other reason, but the document also contains material that is subject to production, the document shall not be produced in native format, but rather in the same format described above for documents other than spreadsheets. There should be appropriate redactions.

Thornton Aff. Ex. A, p. 4. Thus, the parties' agreement, approved by the Court, contemplated redactions by either party for privilege or "any other reason."

Sprint worked diligently to ensure that its retention and collection of documents met the standards in the parties' ESI Agreement. Over the course of the case, Sprint has conducted queries on collections from a list of 17 (seventeen) custodians.[28] In an attempt to pull potentially relevant/responsive documents from all of the documents collected from these custodians, Sprint applied a list of search terms designed to obtain documents related to Northern Valley. Thornton Aff. ¶ 4 (identifying search terms).

[28]This is an extraordinary high number of custodians. As noted above, the model order on e-discovery in complicated patent cases provides for no more than five custodians. *DCG Sys.*, 2011 WL 5244356, at *2.

The application of the search terms to the custodians' documents resulted in approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** with the inclusion of documents that were not "hits" based on the search term list, but were "family members" of document hits. Thornton Aff. ¶ 5. If a document hit had attachments, the attachments were all included as "family members" even if some or all of the attachments had nothing to do with Northern Valley. Thornton Aff. ¶ 5.

Following the identification of the "hits" plus their families, Sprint conducted a manual review of these documents for the purpose of 1) determining whether individual documents were relevant to non-objectionable discovery requests, 2) identifying privileged material, and 3) identifying for redaction other documents with carrier information deemed to be nonresponsive or irrelevant to the non-objectionable requests. As noted above, this process was contemplated by the parties' ESI Agreement. Thornton Aff. Ex. A, p. 4. During this process, documents that were members of families were reviewed to determine whether they were responsive. Thornton Aff. ¶ 6. During this manual review, some documents were prepared for production, some privileged material was redacted, and some nonresponsive information was redacted. Thornton Aff. ¶ 7.

C. Sprint Has Acted Appropriately and Consistent with the Parties' ESI Agreement in Redacting Non-Responsive and Irrelevant Information

As noted above, Sprint's preparation of its production was done in accordance with the ESI Agreement and the production protocol that was established in the Federal Court case, but the actual production occurred after that case was stayed. While Northern Valley suggests confidential redactions are somehow *per se* disallowed, that is utterly contrary to the ESI Agreement Northern Valley signed that allowed redactions for privilege "or any other reason."

Thornton Aff. Ex. A, p. 4. The fact is that Sprint was following not just an agreed practice but its standard practice (Thornton Aff. ¶ 7), and a practice that has been validated in the Iowa litigation. *See* Schenkenberg Aff. Ex. O (Iowa district court decision stating "The Court finds it difficult to believe that INS really wants to review tens of thousands of pages of volume and billing information concerning third-party carriers without any relationship with Iowa.").

Northern Valley's claim that it should not have to trust Sprint's decisions about what is redacted misses the point. Determination about relevance or responsiveness always requires a producing party to exercise judgment, and is not necessarily transparent to the other side. In any case, the protocol used, consistent with its e-discovery practice, is supported by an affidavit. If Northern Valley believes Sprint's production is inconsistent with the standards agreed to, it should take that dispute to the federal court, and Sprint is confident that Sprint's actions will be validated.[29]

D. The Cost of Redoing the Production Outweighs the Benefit to be Gained

As noted, the intrastate claim is quite small. To redo the remaining redactions would require Sprint to spend thousands of dollars of vendor time and ediscovery counsel time, to pay outside counsel to prepare and make the production, and to allocate in-house counsel time to oversee this process. Thornton Aff. ¶ 11. This burden is out of proportion to the value of the intrastate claim, especially given the lack of relevance of the information to the dispute.

[29]Northern Valley suggests Sprint has failed to negotiate in good faith on these issues. Northern Valley Mem., pp. 26-27. That is far from the truth. Sprint has attempted to meet Northern Valley more than halfway, and Northern Valley has offered no compromise, and no suggestions other than Sprint's counsel personally reviewing thousands of pages of Sprint's production. Sprint hopes the Commission will decline to consider, or will deny, Northern Valley's "tentatitve" motion to make Sprint's meet and confer offer public so that Northern Valley's counsel can use that information for other clients in other states. Northern Valley Mem., p. 27, fn 5.

E. Northern Valley Has All of the Unredacted Spreadsheets, and Has Not Demonstrated any Specific Need for More Than it Has

As noted above, this issue was originally raised by Northern Valley with respect to spreadsheets that had been partially redacted. Sprint has produced all spreadsheets in native, unredacted form. Yet Northern Valley makes no showing whatsoever of "good cause" with respect to specific additional information it needs to litigate this case. In the absence of such a showing, Northern Valley has failed to comply with the rules, and the Commission should deny its motion.

IV. THE COMMISSION SHOULD REJECT NORTHERN VALLEY'S REQUEST FOR FEES

SDCL 15-6-37(a)(4) addresses expenses for any motion to compel. While the prevailing party may receive fees incurred in submitting a motion to compel, a tribunal must take into consideration whether "the opposing party's nondisclosure, response or objection was substantially justified or that other circumstances make an award of expenses unjust." SDCL 15-6-37(a)(4)(A). This standard applies to both parties. A party that prevails in opposing a motion to compel is entitled to attorney's fees "unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust." SDCL 15-6-37(a)(4)(B)(emphasis added).

In this situation, Sprint's opposition to this motion is justified. Northern Valley's discovery seeks extensive internal documentation in an attempt to try to calculate a rate that Northern Valley can receive based on Sprint's costs. Such an argument does not appear to have been asserted before in front of this Commission. Moreover, this argument is novel in approach given that the Commission's regulatory scheme and, in fact, that of telecommunications as a whole, has set rates based on the billing party's cost structure. Further, other discovery requests were correctly objected to by Sprint. Because of this, Sprint's objections and positions in the

discovery are substantially justified short of a finding by this Commission that a party can receive rates based on the cost structure of the carrier delivering calls.

Dated: March 13, 2012

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ATTORNEYS FOR SPRINT COMMUNICATIONS COMPANY L.P.

CERTIFICATE OF SERVICE

The undersigned attorney for Sprint Communications Company, L.P. hereby certifies that on the 13th day of March, 2012, a true and correct copy of the following documents:

1. Sprint's CONFIDENTIAL Memorandum In Opposition to Northern Valley's Motion to Compel

2. Sprint's Public Memorandum In Opposition to Northern Valley's Motion to Compel

3. CONFIDENTIAL Affidavit of Philip Schenkenberg in Opposition to Northern Valley's Motion to Compel

    a. Ex A
    b. CONFIDENTIAL Ex B
    c. CONFIDENTIAL Ex C
    d. CONFIDENTIAL Ex D
    e. CONFIDENTIAL Ex E
    f. CONFIDENTIAL Ex F
    g. CONFIDENTIAL Ex G
    h. CONFIDENTIAL Ex H
    i. CONFIDENTIAL Ex I
    j. Ex J
    k. Ex K
    l. Ex L
    m. CONFIDENTIAL Ex M
    n. Ex N
    o. Ex O
    p. CONFIDENTIAL Ex P

4. Public Affidavit of Philip Schenkenberg in Opposition to Northern Valley's Motion to Compel
5. CONFIDENTIAL Affidavit of Sonya Thornton

    a. Ex A

6. Public Affidavit of Sonya Thornton

7. Affidavit of Regina Roach.

8. Affidavit of Bruce R. Tillotson.

9. Affidavit of Karine Hellwig

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