

dispute” is unreasonable.<sup>45</sup> This provision contravenes the two-year statute of limitations in the Communications Act,<sup>46</sup> and, by its terms, purports unilaterally to bar a customer from exercising its statutory right to file a complaint within that limitations period.<sup>47</sup> Similarly, the Tariff provision that requires all disputed charges to be paid “in full prior to or at the time of submitting a good faith dispute” is unreasonable.<sup>48</sup> As written, this provision requires everyone to whom Northern Valley sends an access bill to pay that bill, no matter what the circumstances (including, for example, if no services were provided at all), in order to dispute a charge. Further, the Billing Disputes provision states that Northern Valley is “the *sole judge* of whether any bill dispute has merit.”<sup>49</sup> This provision is unreasonable, because it conflicts with sections 206 to 208 of the Act, which allow a customer to complain to the Commission or bring suit in federal district court for the recovery of damages regarding a carrier’s alleged violation of the Act.<sup>50</sup>

15. In contrast, however, we conclude that Northern Valley’s “Late Payment Fee” provision regarding “Adjustments or Refunds to the Buyer” is reasonable.<sup>51</sup> Sprint maintains that the Tariff imposes late fees on withheld amounts even if it is ultimately decided that Northern Valley’s billing is erroneous.<sup>52</sup> We read the challenged Tariff provision, however, to require Northern Valley to refund and pay simple interest on *all* disputed amounts paid pursuant to the Tariff, including any associated late payment fees.<sup>53</sup>

---

<sup>45</sup> See Tariff, Original Page No. 32, § 3.1.7.1(a) (the “Buyer shall be deemed to have waived any and all rights and claims ... if a good faith dispute is not timely filed”).

<sup>46</sup> 47 U.S.C. § 415.

<sup>47</sup> See 47 U.S.C. § 415. Northern Valley’s contention that the dispute notice provision does not modify the statute of limitations period is inconsistent with the waiver language of the provision. See Answer, Legal Analysis at 45. Indeed, this tariff language is indistinguishable from tariff language that a federal district court recently invalidated. See *Paetec Communications, Inc. v. MCI Communications Services, Inc.*, 712 F. Supp. 2d 405, 416-17 (E.D. Pa. 2010) (construing identical tariff language and finding that “the 90-day dispute resolution provision in Paetec’s tariff could not preempt the federal statute of limitations in the context of a tariff because the terms of a tariff are not negotiated like the terms of a contract. If a term in the tariff could supersede the statute of limitations, it would mean that a carrier could unilaterally void federally codified consumer protections simply by filing a tariff.”). See also *MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc.*, 204 Fed.Appx. 271, 272 (4<sup>th</sup> Cir. 2006) (“a party could not use a tariff to shorten unilaterally the two-year statute of limitations”). None of the cases cited by Northern Valley involved a challenge to the reasonableness of a tariff provision under section 201(b) of the Act. See Answer, Legal Analysis at 43-45.

<sup>48</sup> See Tariff, Original Page No. 32, § 3.1.7.1(b) (“Any disputed charges must be paid in full prior to or at the time of submitting a good faith dispute and failure to tender payment for disputed invoices ... is sufficient basis ... to deny a dispute ...”).

<sup>49</sup> See Tariff, Original Page No. 33, § 3.1.7.1(d) (emphasis added).

<sup>50</sup> 47 U.S.C. §§ 206-208.

<sup>51</sup> See Tariff, Original Page No. 33, § 3.1.7.1(c) (“Buyer will incur a Late Payment Fee on the unpaid amount at the rate of 1.5% per month on the total unpaid balance”). See also Tariff, Original Page No. 33, § 3.1.7.3 (“Adjustments or Refunds to the Buyer”).

<sup>52</sup> Reply at 31.

<sup>53</sup> See Tariff, Original Page No. 33, § 3.1.7.3(a) (“In the event that the Company resolves the billing dispute in favor of a Buyer who has paid the total amount of the disputed bill as required by this Tariff, the Company will credit the Buyer’s account for any overpayment by the Buyer, together with Simple Interest”). See also Tariff Original Page No. 33, § 3.1.7.3.(b).