BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER TC 09-098

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

MEMORANDUM IN SUPPORT OF
SPRINT COMMUNICATIONS COMPANY L.P.'S
MOTION TO DISMISS SANCOM'S CROSS-CLAIM

Sprint Communications Company L.P. ("Sprint") respectfully submits this memorandum in support of its motion to dismiss the Cross-claim filed by Sancom, Inc. ("Sancom").

ARGUMENT

South Dakota Network, LLC ("SDN") initiated this action, alleging that Sprint is liable for intrastate switched access charges billed to it by SDN. As more fully explained in its Answer and Counterclaim, Sprint denies all liability to SDN and a refund of amounts it overpaid between 2007 and 2009. In addition to filing its Answer and Counterclaim, Sprint filed a Third Party Complaint against Sancom, seeking declaratory relief from the Commission that Sancom cannot assess intrastate switched access charges for calls to Call Connection Companies. *See* Sprint's Third Party Complaint.

Sprint specifically limited the demand in its Third Party Complaint against Sancom to declaratory relief because Sancom and Sprint are presently parties to litigation in the United States District Court for the District of South Dakota, Docket No. 4:07-CV-04107-KES (the "Litigation"). In the Litigation, Sancom has demanded money damages from Sprint for failing to pay intrastate switched access charges for calls to Call Connection Companies, and Sprint has counterclaimed to recover amounts improperly billed by and paid to Sancom for calls to Call

Connection Companies. A copy of Sancom's Complaint and Sprint's Counterclaim are attached as Exhibits A and B respectively.

Because the parties have asserted claims for damages in the Litigation, SDCL 49-13-1.1 prevents the parties from seeking a damages award from the Commission. SDCL 49-13-1.1 provides:

> 49-13-1.1. Complaint to commission or suit by private person—Election of remedies. Any person claiming to be damaged by any telecommunications company or motor carrier may make complaint to the commission or may bring suit on his own behalf for the recovery of damages in any court of competent jurisdiction in this state, but no person may pursue both remedies at the same time.

Sancom's Cross-claim seeks to recover the very same damages it is seeking to recover in the Litigation. *Compare* Sancom's Complaint ¶¶ 15-18 (Ex. A) (seeking monetary damages for alleged failure to pay intrastate access charges) *with* Sancom's Cross-claim ¶¶ 9-13 (seeking monetary damages for alleged failure to pay intrastate access charges).

The South Dakota Supreme Court has recognized that SDCL 49-13-1.1 limits a party's ability to present claims before the Commission when those claims have been already asserted in another venue. *See State v. Public Utilities Comm'n of South Dakota*, 381 N.W.2d 226, 230 (S.D. 1986) (upholding the lower court's decision to deny a party's petition to intervene in commission proceedings when the party had elected to pursue its remedy in circuit court, citing to SDCL 49-3-23 (the predecessor statute to 49-13-1.1)). The same result is required in this case.

For the above reasons, the Commission should grant Sprint's motion to dismiss Sancom's Cross-claim for those damages which it is currently seeking in federal court.

Dated: February 11, 2010

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

By_____

Talbot J. Wieczorek
Gunderson, Palmer, Nelson & Ashmore, LLP
440 Mount Rushmore Road
Third Floor
P.O. Box 8045
Rapid City, SD 57701
605.342.1078

Philip R. Schenkenberg
BRIGGS AND MORGAN, P.A.
80 South Eighth Street
2200 IDS Center
Minneapolis, MN 55402
612.977.8400

Attorneys for Sprint Communications Company L.P.

2461337v2
2461337v3

FILED
FEB - 8 2008
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

* * * * * * * * * * * * * *

NORTHERN VALLEY COMMUNICATIONS, LLC, a South Dakota Limited Liability Company,	*	Civ. 08- 1003
Plaintiff,	*	**COMPLAINT**
vs.	*	
SPRINT COMMUNICATIONS COMPANY, LIMITED PARTNERSHIP, a Delaware partnership,	*	
Defendant.	*	

* * * * * * * * * * * * * * * * * *

Plaintiff, Northern Valley Communications, LLC, by and through its counsel, and for its Complaint against the Defendant, states and alleges as follows:

NATURE OF THE CASE

1. Plaintiff brings this action against Defendant to recover on an account for failure of Defendant to pay to Plaintiff the amounts required by federal and state tariffs to be paid for the provisioning of originating and terminating telephone access services.

THE PARTIES

2. Plaintiff, Northern Valley Communications, LLC, is a limited liability company organized and existing under the laws of South Dakota, with its principal place of business in Aberdeen, South Dakota.

3. Upon information and belief, Defendant, Sprint Communications Company, Limited Partnership, is organized and existing under the laws of the State of Delaware.

EXHIBIT A

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §1332. There is diversity jurisdiction because the Plaintiff is a limited liability company organized and existing under the laws of the State of South Dakota and the Defendant is a corporation that is incorporated and has its principal places of business in a state other than South Dakota. More than $75,000.00 is at issue, exclusive of interest and costs.

5. Venue is proper pursuant to 28 U.S.C. §1391(a) (2) and (3).

FACTUAL ALLEGATIONS

6. The Plaintiff is a competitive local exchange carrier ("CLEC") which provides telephone and other services through wires to the homes and businesses of its customers. Plaintiff also provides originating and terminating access services to long distance companies, which allow the long distance companies to transmit long distance calls even though they do not own or lease the telephone lines that connect to the users' telephones.

7. Defendant is an interexchange (i.e., long distance) carrier who provides long distance service.

8. Defendant utilized the originating and terminating services provided by Plaintiff.

9. Since September 1, 2007, Plaintiff billed Defendant, on a monthly basis, for use of its services in accordance with the applicable rates set forth in its tariffs filed with the Federal Communications Commission ("FCC") and the South Dakota Public Utilities Commission ("Commission"). Attached hereto as **Exhibit 1** are the September 1, 2007, October 1, 2007, November 1, 2007, December 1, 2007, January 1, 2008, and February 1,

2008, invoices showing a balance due as of February 1, 2008, from the Defendant in the sum of **$1,214,452.97.**

10. Defendant has failed and refused and continues to fail and refuse, to pay the invoices although demand for said payments has been made by Plaintiff. As a result of such failure, Defendant is indebted to Plaintiff in the sum of **$1,214,452.97.**

COUNT I
BREACH OF CONTRACT

11. Plaintiff re-alleges paragraphs 1 through 10 above and incorporates them as if set forth fully herein.

12. Pursuant to state and federal regulations, the Plaintiff has filed tariffs with both the Commission and the FCC, which tariffs have the force and effect of law, the terms of which constitute valid and binding contracts.

13. Plaintiff has invoiced Defendant pursuant to rates as set forth in their respective federal and state tariffs as outlined above.

14. Defendant failed and refused to pay those amounts invoiced to it by the Plaintiff, thus constituting a breach of the applicable tariffs and therefore a breach of contract.

COUNT II
BREACH OF IMPLIED CONTRACT RESULTING FROM
VIOLATION OF TARIFFS

15. Plaintiff re-alleges paragraphs 1 through 10 above and incorporates them as if set forth fully herein.

16. The Plaintiff has validly filed tariffs with both the FCC and the Commission in accordance with the Federal Communications Act and applicable South Dakota law.

17. Plaintiff has supplied services and submitted invoices to Defendant pursuant to its filed tariffs for services provided, which constitutes an implied contract.

18. Defendant has failed and refused and continues to fail and refuse to pay the invoices. Defendant's actions constitute a material uncured breach of the tariff and of the implied contract among the parties resulting from the filed tariffs.

COUNT III
UNJUST ENRICHMENT

19. Plaintiff re-alleges Paragraphs 1 through 10 above and incorporates them as if set forth fully herein.

20. Plaintiff originated and terminated long distance calls for Defendant. This conferred a benefit upon Defendant because Defendant was able to collect from its customers for providing long distance service. Defendant has not paid Plaintiff for providing such services.

21. It would be inequitable for Defendant to retain the benefit of the services provided by Plaintiff without properly compensating Plaintiff for the value of the services provided.

22. Pursuant to the equitable doctrines of quantum meruit and unjust enrichment, Plaintiff is entitled to payment form Defendant for the amount of the invoices.

WHEREFORE, Plaintiff request judgment against Defendant as follows:

1. For the sum of **$1,214,452.97** and any unpaid amounts to date of trial.
2. For pre-judgment interest, post-judgment interest, and the costs of this action.
3. For such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury of all issues triable of right by jury.

Dated at Aberdeen, South Dakota, this 7th day of February 2008.

BANTZ, GOSCH & CREMER, L.L.C.

James M. Cremer
Attorneys for Plaintiff
305 Sixth Avenue SE
P.O. Box 970
Aberdeen, SD 57402-0970
(605) 225-2232
jcremer@bantzlaw.com

\NVC\Sprint\Complaint 2008-02-01

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

NORTHERN VALLEY COMMUNICATIONS, LLC, a South Dakota Limited Liability Company, Plaintiff, vs. SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, a Delaware partnership, Defendant.	*	CIV. 08-1003 **DEFENDANT'S ANSWER AND COUNTERCLAIM**

Comes now the Defendant Sprint Communications Company Limited Partnership and for its Answer to the Plaintiff's Complaint states and alleges as follows:

1. As to Paragraph 1, it is admitted only that Plaintiffs have brought an action making the allegations stated. The allegations, however, are denied.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. As to Paragraph 4, it is admitted that the Court has jurisdiction of the Plaintiff's Complaint pursuant to 28 USC § 1332 as there is diversity between the Plaintiff and Defendant and the Plaintiff's claimed damages are allegedly in excess of $75,000.

5. As to Paragraph 5, this is a legal conclusion to which no response is required.

6. As to Paragraph 6, it is denied that Plaintiff qualifies as a competitive local exchange carrier as defined in 47 C.F.R. § 61.26(a)(1) or otherwise in the Federal Communications Commission's regulations. The remainder of Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. As to Paragraph 8, it is denied that the bills at issue here are based on originating and terminating access service.

EXHIBIT B

9. As to Paragraph 9, it is admitted only that Defendant Sprint Communications Company Limited Partnership has received various invoices from Plaintiff. It is denied that Defendant Sprint Communications Company Limited Partnership utilized the originating and terminating access services that were invoiced. The remainder of Paragraph 9, therefore, is denied.

10. As to Paragraph 10, it is admitted only that Defendant Sprint Communications Company Limited Partnership has not paid for services it did not utilize. The remainder of Paragraph 10 is denied.

COUNT I – BREACH OF CONRACT

11. Defendant Sprint Communications Company Limited Partnership realleges Paragraphs 1-11 above as if set forth in full herein.

12. As to Paragraph 12, it is admitted that Plaintiff has filed tariffs with the Federal Communications Commission and/or the South Dakota Public Utilities Commission. The remainder of Paragraph 12 is a legal conclusion to which no response is required.

13. As to Paragraph 13, it is admitted only that Defendant Sprint Communications Company Limited Partnership received various invoices from Plaintiff. The remainder of Paragraph 13 is denied.

14. As to Paragraph 14, it is admitted only that Defendant Sprint Communications Company Limited Partnership has not paid for services it did not utilize. The remainder of Paragraph 14 is denied

COUNT 2 – BREACH OF IMPLIED CONTRACT RESULTING FROM VIOLATION OF TARIFFS

15. Defendant Sprint Communications Company Limited Partnership realleges Paragraphs 1-15 above as if set forth in full herein.

16. As to Paragraph 16, it is admitted only that Plaintiff filed tariffs with the Federal Communications Commission and/or the South Dakota Public Utilities Commission. The remainder of Paragraph 16 is a legal conclusion to which no response is required.

17. As to Paragraph 17, it is admitted only that Defendant Sprint Communications Company Limited Partnership received various invoices from Plaintiff. The remainder of Paragraph 17 is denied.

18. As to Paragraph 18, it is admitted only that Defendant Sprint Communications Company Limited Partnership has not paid for services it did not utilize. The remainder of Paragraph 18 is denied

COUNT 3 – UNJUST ENRICHMENT

19. Defendant Sprint Communications Company Limited Partnership realleges Paragraphs 1-19 above as if set forth in full herein.

20. Paragraphs 20, 21, and 22 of Plaintiff's Complaint are denied.

AFFIRMATIVE DEFENSES

21. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

22. Plaintiff's claims are barred because it did not provide the tariffed services for which it is attempting to charge.

23. Plaintiff's claims are barred because its tariff was unlawfully filed and is void *ab initio*.

24. Plaintiff's claims are barred by its inequitable conduct and unclean hands and by the fact that an award of damages would unjustly enrich plaintiff.

25. Plaintiff's claims are barred because Sprint's conduct was based on justification or excuse.

26. Plaintiffs' claims should properly be heard in a different venue than the Northern Division.

WHEREFORE Defendant Sprint Communications Company Limited Partnership requests that the Plaintiff's Complaint be dismissed, with the Defendant to recover its costs, disbursements, and attorneys fees if available, and that the Court award such other relief as is just.

Counterclaim

Sprint Communications Company Limited Partnership ("Sprint"), by and through its attorneys, submits its counterclaim against Plaintiff/Counterclaim Defendant Northern Valley Communications, LLC ("Northern Valley" or "Counterclaim Defendant"), and alleges as follows:

INTRODUCTION

1. Sprint provides wireline long-distance telecommunications services to its customers around the country. To provide these long-distance services to its customers, Sprint frequently must make use of other telecommunications carriers' services, and interconnect with other carriers' phone lines. For example, when a Sprint customer in Virginia places a call to someone in South Dakota, Sprint must use the facilities of the local phone company to deliver the call to the called party.[1] Because it must purchase use of these local facilities, Sprint is not only a provider of telecommunications services, but also a customer of local telecommunications carriers. This counterclaim challenges a scam by Northern Valley, a local phone company in Aberdeen, South Dakota, and its business partners pursuant to which Northern Valley has billed (and continue to bill) millions of dollars of unauthorized and illegal charges to Sprint allegedly in its role as a customer of the local phone companies.

2. This case involves two types of companies that have conspired together to generate the charges at issue. Northern Valley is the first type of company, a local exchange carrier ("LEC") that delivers calls to local customers. Northern Valley has conspired with a second type of company ("Call Connection Company") that has established free or nearly free

[1] There is an exception when the call is to a Sprint wireless customer, but that exception is not relevant here.

conference-calling, chat-line, or similar services that callers throughout the United States use to connect to other callers. Northern Valley and the Call Connection Companies, including the third-party defendant Global Conference Partners, LLC, collectively are engaged in unlawful schemes to bill Sprint (along with other carriers) for charges Sprint neither expressly nor implicitly agreed to pay because the charges are not authorized under applicable tariffs. The scam, which is commonly referred to as "traffic-pumping," has two components.

3. First, in contrast to LECs in other parts of the country that often charge considerably less than a penny per minute for similar access services, Northern Valley charges very high rates – approximately 6.5 cents per minute – to long-distance carriers to "terminate" interstate calls to the local carrier's customers (and more than 11 cents per minute for intrastate termination). This is more than ten times as much as the .55 cents per minute charged by Qwest, the LEC with which Northern Valley competes.[2]

4. Second, Northern Valley has partnered with unscrupulous businesses that offer some other kind of phone service, such as chat lines or conference calling. Under these schemes, the businesses obtain phone numbers from Northern Valley. The businesses then advertise that they are offering their services to the public for "free" or nearly for free. When consumers call the advertised phone number to make their "free" or nearly free calls, these calls then are routed through the facilities of Northern Valley. As a result of the scheme of Northern Valley and these

[2] Northern Valley competes for customers in the same territory as Qwest, an incumbent local exchange carrier ("ILEC"). Unlike in most businesses, the fact that Northern Valley has higher access charges than Qwest does not disadvantage it, because the customers deciding whether to purchase service from Northern Valley or Qwest do not pay those access charges. Rather, it is the long distance providers that pay those charges, and they have no choice but to transmit calls over the facilities of the provider chosen by the local customers. As explained below, in the scam at issue, Northern Valley is actually attempting to use its higher access charges as an advantage by kicking back some of those charges to certain businesses to induce them to partner with it to inflate traffic through Northern Valley's territory.

Call Connection Companies, huge numbers of calls between individuals throughout the country are pumped through Northern Valley's "local" switches. If it is Sprint's long-distance customers who are making these conference or chat line calls, Northern Valley then bills Sprint the inflated "terminating" access charges to deliver its traffic to the conference or chat line platform, or other service, even though none of the parties who are communicating resides in the territory of Northern Valley. Northern Valley bills so much in inflated "terminating access" charges that it is able to kick back a substantial portion of the monies received to its unscrupulous business partners, which in turn enables the latter to offer the service to the public "for free" or nearly for free. Even after payment of the kickback, Northern Valley profits wildly from this illegal scam.

5. As a direct result, Sprint has been billed for millions of dollars of unlawful charges, charges that Northern Valley has no legal basis to collect for carrying this type of call traffic. Sprint therefore asks for an injunction shutting down the illegal arrangements Northern Valley has entered with these scam businesses, a declaratory ruling that the joint conduct of Northern Valley and these businesses is illegal, and damages to cover all charges Sprint paid out pursuant to this scam before Sprint identified it and stopped paying the illegal and unauthorized bills, as well as any charges Sprint may have continued to pay because of an inability to identify all traffic associated with the scam.

PARTIES

6. Sprint Communications Company Limited Partnership is a Delaware limited partnership with its principal place of business at 2001 Edmund Halley Drive, Reston, Virginia 20191. Sprint and its affiliates provide an array of telecommunications services in South Dakota and throughout the country. At all relevant times, Sprint has been qualified and registered to do business in South Dakota.

7. Northern Valley, Inc. is a South Dakota local exchange carrier that has its principal place of business in Aberdeen, South Dakota. Northern Valley is a subsidiary of James Valley Telecommunications of Groton, which is an incumbent local exchange carrier.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), because Sprint's claims arise under the federal Communication Act. Sprint is authorized to bring suit in federal court for damages caused by violations of the Communication Act under 47 U.S.C. § 207. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction), because the parties' citizenship is diverse and the amount in controversy exceeds $75,000. Further, this Court has jurisdiction over Sprint's request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. Finally, the Court has jurisdiction over the pendant state law claims pursuant to 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over Northern Valley because it is located in South Dakota, regularly solicits business in South Dakota, and/or derives substantial revenue from activities in South Dakota.

10. To the extent that this Court finds that venue is proper in this district regarding the claims in Northern Valley's Complaint, then venue is proper for these counterclaims under 28 U.S.C. § 1391(a).

BACKGROUND

A. Sprint's Services

11. Sprint is a telecommunications carrier offering long-distance wireline services to its customers around the country. Long-distance calls are those that are made from one local

calling area to another. For example, in a typical situation (unlike in this case), a long-distance call may be made from a Sprint customer in Virginia to a called party, or "end user," in South Dakota. Sprint generally owns the facilities over which the call travels between the local calling area of the calling customer and the local calling area of the called customer (or it enters arrangements with other carriers to route the calls over their facilities).

12. As a general matter, Sprint does not own the facilities within a local calling area over which the call travels its last leg to the called customer's premises. The facilities used to complete the last leg of these calls are typically provided by the called party's own local exchange carrier ("LEC").[3] Because Sprint does not generally own the facilities that physically connect to end users, it must pay local carriers for access to them. The charge that Sprint pays for access to the called party is known as a "terminating access" charge because the call "terminates" with the party that is called. In this way, Sprint is a customer of the local exchange carriers – it is purchasing the local exchange carriers' "terminating access service" in order to enable its customers to complete long distance calls to their final destination, that is, to the premises of the called party.

13. Generally speaking, Sprint (like other long-distance carriers) purchases terminating access service in one of two ways. First, it may have a contract with a particular local exchange carrier that governs the terms of termination. Second (as is the case with Northern Valley), it may purchase the service under a tariff published by the local carrier that contains charges for terminating access (along with other offered services). Pursuant to the terms of that tariff, Sprint and other long-distance carriers have purchased access services under

[3] For those calls made to a Sprint Nextel wireless or local customer, Sprint can deliver the traffic directly and does not need to deliver the call via a LEC.

the tariff whenever they hand off a call to the local carrier that meets the tariff's definitions of "terminating access" service. Because LECs have an effective monopoly over local telephone service in their service areas, the long distance carriers often have no choice but to purchase the service defined in the tariff when the calls are made from one of their customers to an end user in the calling area of the local exchange carrier. *See In re Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 30 (2001). For that reason, among others, tariffs are construed narrowly – only services expressly set out in the tariff are "deemed" to be purchased. *See In re Theodore Allen Commc'ns, Inc. v. MCI Telecomms. Corp.*, 12 F.C.C.R. 6623, ¶ 22 (1997).

B. <u>Counterclaim Defendant's Scheme</u>

14. In this case, Northern Valley has billed Sprint for services it asserts that Sprint has purchased under Northern Valley's tariffs. But a tariff that actually authorized the kind of scams that Northern Valley has engaged in would not pass legal muster, and Northern Valley has not, in fact, included these scam services within its schedule of tariffed charges. As a result, Northern Valley has billed Sprint for services that are *not* authorized in its tariffs. Northern Valley has no right to bill Sprint such bogus charges.

15. Specifically, Northern Valley has devised a scheme artificially to inflate call volumes in Northern Valley's local calling area in order to bill Sprint inflated rates for what Northern Valley wrongly characterized as tariffed "terminating access" service. But under this scheme, Sprint is *not* connecting a call with a called party in South Dakota that is a customer of Northern Valley. Instead, Northern Valley's scheme with its Call Connection partners involves

advertising "conference call," "chat line," or similar services that allow callers, who typically do not reside in South Dakota, to talk to one another.

16. Callers throughout the nation access these services by dialing a ten-digit phone number with a South Dakota area code. To Sprint, each call appears to be an ordinary long-distance call to a called party in South Dakota. Sprint thus carries the traffic close to the location of the South Dakota number. At that point, Sprint (either directly or indirectly) transfers the call to Northern Valley for "termination."[4]

17. If a Sprint customer were calling one of the residences or businesses that purchase local phone service from Northern Valley, Sprint would be purchasing a typical "terminating access" service, and would be paying the local carrier's terminating access charge under the tariff. And in fact, Sprint has paid these terminating access charges in the past when the service provided was the true terminating access to an "end user," *i.e.* a residential or business customer that resided in the LEC's territory. But that is not what happens in this traffic pumping scheme. Instead, with these calls, the LEC transfers the call not to an end user customer, but to a Call Connection Company that is jointly engaged in this scam.

18. These Call Connection Companies are business partners or joint venturers, not "customers" of Northern Valley as that term is used in the local phone companies' tariffs or in common parlance. The Call Connection Companies do not pay money to Northern Valley for any "service" as would be the case in a true customer relationship. Instead, they actually *receive* money in the form of kickbacks from Northern Valley for their participation in this illegal scheme.

---

[4] The South Dakota phone number belongs to Northern Valley and is assigned by Northern Valley to the call connection service. The phone number is in the familiar area code plus seven digits format (otherwise known as NPA-NXX-XXXX).

19. Moreover, the calling parties are not making terminating calls to these Call Connection Companies, but are seeking to talk to other parties almost always outside of the service territory of Northern Valley. The Call Connection Companies are simply connecting the calls like any other common carrier, and the calls do not actually "terminate" in the local South Dakota exchange. Instead, the calls flow to those participating in the conference call or chat line and who could be located anywhere in the nation or even in another country. Thus, unlike the typical scenario where a caller makes a long-distance call to a person in South Dakota and Sprint pays Northern Valley to "terminate" the call, Sprint is merely delivering the call to an *intermediate* point – delivering the call to Northern Valley who then delivers the call to the conference call or chat line provider, which is likely located outside Northern Valley's territory, and which in turn connects callers who are geographically dispersed.

20. Sprint has not expressly agreed to pay terminating access charges for this service. Nor can it be deemed to have agreed to pay for this service. The service is not a terminating access service as defined in Northern Valley's tariffs. Consequently, Northern Valley has no right to bill Sprint for this "service." Nonetheless, Northern Valley has been unlawfully billing Sprint "terminating access" charges for these calls, even though the calls do not terminate in the local exchange, and even though the persons connected on the calls are not "end user customers" of Northern Valley, as is required under the tariffs' definition of terminating access service.

21. The advantage to Northern Valley and its partners from this scam stems from the fact that Northern Valley has set its terminating access rates at high levels. Indeed, on information and belief, Northern Valley has set its access rates at a level greater than it is permitted under federal law. In general, the FCC prohibits LECs such as Northern Valley from charging access rates that exceed the rates charged by the incumbent LECs ("ILECs") competing

in the same area – in this case Qwest. However, there is an exception for competitive LECs ("CLECs") that compete in rural areas with ILECs that serve both urban and rural areas, which permits them to file higher rates. Northern Valley has set its access rates much higher than the competing ILEC Qwest, apparently on the theory that it qualifies as a "rural CLEC" under federal regulations.

22. However, on information and belief, Northern Valley does not qualify as a rural CLEC under federal law and relevant FCC regulations, including 47 CFR 61.26(a). First, on information and belief, Northern Valley maintains such a close and interconnected corporate relationship with another company that qualifies as an ILEC, James Valley Telecommunications of Groton, including use of its facilities, that Northern Valley cannot be considered a CLEC under federal law and FCC regulations. Second, on information and belief, Northern Valley serves at least one end user located in an incorporated place of 50,000 or more, or located in an urbanized area, and therefore does not qualify as a rural CLEC. Thus, Northern Valley's tariffs are patently unlawful and void *ab initio*, and Northern Valley cannot lawfully charge Sprint at its exorbitant rates.

23. Moreover, the bogus terminating access charges are high enough to allow Northern Valley and the Call Connection Companies to profit handsomely from this scheme. Because the bogus access charges are so high, the Call Connection Companies are able to offer their services to calling parties for no cost, or nearly no cost – the calling party generally need only pay normal long-distance charges to set up a call. And for customers who have long distance calling plans that do not charge per minute, the calling party does not pay anything for the call at all. Of course, these caller connection services are not actually "free" – they are directly and unreasonably subsidized by long distance carriers such as Sprint who are being

charged high "terminating access" rates. They are thus being subsidized by all long distance carriers' customers throughout the country, including those who never use the Call Connection Companies' services.

24. As a result of the "free" or nearly free service offered by Global Conference and possibly other Call Connection Companies, traffic volumes with Northern Valley have skyrocketed. Northern Valley's bills to Sprint averaged $ 17,000 per month for all of 2004 – and even those bills could well have resulted in part from traffic pumping. Traffic began increasing in 2005 and 2006, however, and then skyrocketed in 2007 and 2008. In February 2008, Northern Valley billed Sprint $ 257,000 in access charges – an increase of more than 15 times from 2004 billing. This dramatic increase in traffic can be traced almost entirely to Northern Valley's "traffic-pumping" scam.

25. The scam here is one of a number of similar scams recently perpetrated by certain rural LECs and their call connection partners. Several suits involving similar scams are pending in Iowa, for example. *See, e.g.*, *Sprint Communications Co., L. P. v. Superior Telephone Cooperative*, No. 4:07-cv-00194 (S.D. Iowa); *Qwest Communications Corp. v. Superior Telephone Cooperative*, No. 4:07-cv-0078 (S.D. Iowa), *AT&T Corp. v. Superior Telephone Cooperative*, No.4:07-cv-0043 (S.D. Iowa); *AT&T Corp. v. Reasnor Telephone Co., LLC*, No. 4:07-cv-00117 (S.D. Iowa). There are also three similar suits pending in South Dakota. *See Northern Valley Communications, LLC v. MCI Communications Services, Inc., d/b/a Verizon Business Services*, No. Div. 07-1016 (D.S.D.); *Northern Valley, Inc. v. MCI Communications Services, Inc., d/b/a Verizon Business Services*, No. 07-4106 (D.S.D.); *Sancom, Inc. v. Sprint Communications Co. L.P.*, No. 07-4107 (D.S.D.). The FCC has now found such schemes to be likely unlawful and is exploring ways to prohibit them going forward. *See Establishing Just and*

Reasonable Rates for Local Exchange Carriers, Notice of Proposed Rulemaking, WC Docket No. 07-135, FCC 07-176, ¶¶ 11, 18-19, 34-37 (October 2, 2007). But that FCC investigation is not evaluating *retroactive* relief to long-distance carriers like Sprint for the scams perpetrated by LECs prior to the FCC's ultimate ruling on this issue. Instead, the FCC has left open the issue of relief for scams such as Northern Valley's during the current time period.

26. As a result of the proliferation of scams similar to that of Northern Valley, Sprint began monitoring increases in traffic. Sprint noticed the spike in billing by Northern Valley. In September 2007, it began disputing Northern Valley's access bills. Northern Valley then brought the current suit. In reality, however, it is Northern Valley that owes Sprint a refund, since Sprint had already paid Northern Valley millions of dollars in access charges for traffic stemming from Northern Valley's scam before it came to realize the existence of the scam.

C. **The Tariffs**

27. There are many problems with the scheme devised by Northern Valley and the Call Connection Companies. Foremost among them is that Northern Valley cannot lawfully charge Sprint for a terminating access service under its filed tariffs.

28. The services that Northern Valley offers related to handling calls from customers in other states are set forth in interstate tariffs filed with the Federal Communications Commission (FCC), and the services that Northern Valley offers related to handling in-state calls are set forth in intrastate tariffs filed with the South Dakota Public Utilities Commission (PUC). The tariffs describe the services that Northern Valley offers to all of its customers, including customers such as Sprint that purchase access services from Northern Valley. The tariffs also set the rates charged for those services. Under Section 203 of the Federal Communications Act, 47 U.S.C. § 203, carriers subject to tariffing requirements cannot charge customers for services not

specified in their interstate tariffs, and cannot charge rates other than those set out in those tariffs. *See American Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 222 (1998). Further, because carriers set the terms of their tariffs unilaterally, it is well settled that any ambiguity in the terms of a tariff must be strictly construed against the carrier that drafted it and in favor of customers. *See In re Theodore Allen Commc'ns, Inc. v. MCI Telecomms. Corp.*, 12 F.C.C.R. 6623, ¶ 22 (1997). Similar rules govern the intrastate tariffs.

29. Northern Valley's tariffs here are written to describe – and authorize billing of terminating access charges for the typical call where an interexchange carrier like Sprint delivers a call to Northern Valley for the call to be terminated to the local end-user customer of Northern Valley. However, as explained above, the so-called "service" that Northern Valley is providing to Sprint is not terminating access to Northern Valley's end users. Thus, unsurprisingly, the tariffs do not authorize terminating access charges for Northern Valley merely transiting calls to the Call Connection Companies, who then actually connect the callers.

30. First, Northern Valley is not connecting calls to "end users," as is required under its tariffs to lawfully bill for terminating access charges. The definition of "Switched Access Service" in its state and federal tariffs states that such service "provides a two-point communications path between a customer designated premises and an end user's premises," and that "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." *See* Northern Valley Tariff F.C.C. No. 2 § 5.1 (relevant sections attached as Exhibit A); LECA Tariff No. 1, § 6.1 (relevant sections attached as Exhibit B). The tariffs define an "End User" as "any customer of an interstate or foreign telecommunications service that is not a carrier." *See* Northern Valley FCC Tariff No. 2 § 2.6 (Exhibit A), LECA Tariff No. 1 § 2.6 (Exhibit B).

Therefore, Northern Valley must deliver the calls to "end users," and "End Users" under the tariffs do not include other carriers. However, the Call Connection Companies are performing a common carrier function when routing and connecting calls to their conference call, chat line and similar services. In this sense, they are wholly unlike a typical Northern Valley end-user, a person, family, or business actually located in South Dakota that subscribes to Northern Valley's local phone service in order to make and receive calls. Northern Valley has no basis for billing Sprint access charges for transferring calls to these entities that are not "End Users" under the tariff.

31. Second, the Call Connection partners are not "Customers" of Northern Valley, as is required under the tariffs for Northern Valley to lawfully bill for these access charges. As explained above, the tariff terms state that an "End User" must be a "customer." "Customer" is defined as an entity "which subscribes to the services offered under this tariff Northern Valley FCC Tariff No. 2 § 2.6 (Exhibit A), LECA Tariff No. 1 § 2.6 (Exhibit B). The Call Connection Companies are not actually paying for local phone services from Northern Valley at all. First, on information and belief, the Call Connection Companies do not actually purchase End User Access Service and pay the subscriber line charge, as is required to subscribe to Northern Valley's service under the tariff. Second, whether or not the Call Connection Companies pay fees to Northern Valley, Northern Valley is making net payments to the Call Connection Partners, which demonstrates that the Call Connection Partners are not legitimate "customers" of Northern Valley. Finally, the relationship between Northern Valley and the Call Connection Companies is more akin to that of joint venturers or business partners than to a carrier and its customer. Northern Valley and the Call Connection Companies are jointly acting to stimulate

traffic in an effort to obtain revenue that they plan to share. In this joint enterprise, the Call Connection Companies are not acting as Northern Valley's "customers."

32. Third, Northern Valley is not providing a "switched access" service or "terminating access" service under the tariff. As explained above, Northern Valley's tariffs define "Switched Access Service" as service that "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." *See* Northern Valley Tariff F.C.C. No. 2 § 5.1 (Exhibit A); LECA Tariff No. 1, § 6.1 (Exhibit B). Terminating access requires actual completion of the telephone call to the end of the call. But instead of terminating the calls to the Call Connection Companies, Northern Valley transfers the calls to the Call Connection Companies, which utilize their own conference call, chat line, or other similar service to route and/or connect calls themselves. Thus, the calls do not "terminate" with the Call Connection Companies, and many of these calls are not connected through to end users located in Northern Valley's South Dakota service territories at all, and may even be connected through to end-users located internationally. Indeed, on information and belief, the conference bridges or similar connections used to connect Northern Valley, the Call Connection Companies, and the actual end-users may not be located in Northern Valley's territory at all. In no sense is Northern Valley providing "switched access" or "terminating access" under the tariffs.

33. For all of these reasons, Northern Valley's access charges to Sprint for traffic to the Call Connection Companies are not authorized by their tariffs.

34. In turn, the Call Connection Companies are not entitled to the kickbacks they reap from artificially inflating traffic to their "free" services. Their business models are premised on advertising a "free" call connection service to users of their services to artificially generate high

call volume, and receiving payments based on unlawfully billed terminating access charges in return. Their operations – and profit – are entirely subsidized by the windfall they unlawfully receive from the payments made by long-distance carriers such as Sprint to Northern Valley.

COUNT ONE

(Breach of Federal Tariff Obligation and Communications Act)

35. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 34 of its Counterclaim as if fully set forth herein.

36. Northern Valley has billed and has collected a substantial portion of millions of dollars in charges denominated as "terminating access" charges based on transiting interstate long-distance calls from Sprint to its joint venture partners, that are carriers, not end user customers. These joint venture partners provide conference call, chat line and/or similar services that enable callers to connect to each other and on information and belief, are themselves located outside of Northern Valley's local calling area. Northern Valley had no basis in its federal tariffs for collecting these charges.

37. The collection of charges for interstate services not set out in Northern Valley's interstate tariffs violates 47 U.S.C. § 203. Sprint is authorized to bring suit for damages for this conduct in this Court pursuant to 47 U.S.C. § 207.

38. Sprint is entitled to reasonable damages in the amount of the unauthorized access charges paid to Northern Valley under Northern Valley's federal tariffs, plus reasonable costs and attorneys' fees, pursuant to 47 U.S.C. §§ 206, 207. Sprint will establish the amount of damages at trial.

39. Sprint is also entitled to an order enjoining Northern Valley from assessing charges on Sprint pursuant to their unlawful scheme particularly when such charges are not expressly authorized by Northern Valley's tariffs. 28 U.S.C. §§ 2201, 2202.

40. Sprint is further entitled to a declaratory judgment and declaration of rights establishing that Northern Valley has no right to charge or collect access charges based on transiting interstate long-distance calls from Sprint to entities that provide conference call, chat line, international call, or similar services that enable callers to connect to each other. 28 U.S.C. §§ 2201, 2202.

COUNT TWO

(Breach of State Tariff Obligation and Communications Act)

41. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 40 of its Counterclaim as if fully set forth herein.

42. Northern Valley has billed and in some cases collected charges denominated as "terminating access" charges based on transiting intrastate long-distance calls from Sprint to its joint venture partners that are carriers, not end user customers. These joint venture partners provide conference call, chat line, and/or similar services that enable callers to connect to each other, and, on information and belief, are themselves located outside of Northern Valley's local calling area. Northern Valley had no basis in its state tariffs for collecting these charges.

43. The collection of charges for intrastate services not set out in Northern Valley's intrastate tariffs violates state law. Sprint is authorized to bring suit for damages for this conduct in this Court pursuant to 28 U.S.C. § 1367.

44. Sprint is entitled to reasonable damages in the amount of the unauthorized access charges paid to Northern Valley under Northern Valley's state tariffs, plus reasonable costs and attorneys' fees. Sprint will establish the amount of damages at trial.

45. Sprint is further entitled to an order enjoining Northern Valley from assessing charges on Sprint pursuant to its unlawful scheme when such charges are not expressly authorized by Northern Valley's tariffs.

46. Sprint is further entitled to a declaratory judgment and declaration of rights establishing that Northern Valley has and had no right to charge or collect access charges based on transiting intrastate long-distance calls from Sprint to entities that provide conference call, chat line, international call, or similar services that enable callers to connect to each other.

COUNT THREE

(Unjust Enrichment)

47. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 46 of its Counterclaim as if fully set forth herein.

48. Northern Valley, through its wrongful, improper, unjust, and unfair conduct has reaped substantial and unconscionable profits from Sprint by charging Sprint for services for which Sprint has not agreed to pay and that are not in Northern Valley's tariffs. As such, Sprint has conferred a benefit on Northern Valley, and Northern Valley has received monies to which it is not entitled.

49. In equity and good conscience, it would be unjust for Northern Valley to enrich itself at the expense of Sprint. Among other reasons, Northern Valley had no lawful authority to collect those charges from Sprint. Northern Valley's unlawful conduct will continue unless the prayer for relief is granted.

50. Sprint has been damaged by the actions of Northern Valley and is entitled to damages and restitution in the amount to be determined at trial, plus interest, attorneys' fees, and costs, and all available declaratory and injunctive relief.

COUNT FOUR

(Negligent Misrepresentation)

51. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 50 of its Counterclaim as if fully set forth herein.

52. Northern Valley has supplied false information in invoices sent to Sprint claiming Sprint allegedly owes Northern Valley for services that Northern Valley did not provide to Sprint.

53. Northern Valley supplied this information in the course of a transaction in which Northern Valley had a financial interest.

54. Northern Valley was negligent in obtaining or communicating the information.

55. Northern Valley supplied the information intending or knowing that Sprint would rely on the information.

56. Sprint acted reasonably in detrimentally relying on Northern Valley's representations and paying Northern Valley for services which Northern Valley did not provide to Sprint.

57. The tortious actions of Northern Valley have injured Sprint. Sprint is entitled to reasonable damages in an amount to be proven at trial.

COUNT FIVE

(Civil Conspiracy)

58. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 57 of its Counterclaim as if fully set forth herein.

59. On information and belief, Northern Valley and one or more of the Call Connection Companies agreed to an illicit arrangement or arrangement as follows: (a) the Call Connection Companies would place a "gateway" to connect calls near Northern Valley's service territory; (b) Northern Valley would assign one or more telephone numbers to the Call Connection Companies; (c) Northern Valley would bill Sprint for terminating access charges on long distance calls that were routed through the Call Connection Companies; (d) the Call Connection Companies would market services designed to increase volumes of traffic routed through Northern Valley's serving area; and (e) Northern Valley would share with the Call Connection Companies a portion of the monies billed to or received from Sprint.

60. As explained above, Northern Valley's conduct in billing Sprint for terminating access services for these calls violates the terms of Northern Valley's federal and state access tariffs, as well as federal and state law. Further, the conduct of Northern Valley and the Call Connection Companies has intentionally caused Northern Valley and these companies to be in wrongful possession and control of monies that rightfully belong to Sprint, contrary to Sprint's possessory right thereto.

61. The agreements reached between Northern Valley and one or more of the Call Connection Companies constitute agreements to take unlawful actions. The agreements between Northern Valley and one or more of the Call Connection Companies constitute a civil conspiracy or conspiracies, and Northern Valley and the Call Connection Companies are liable for the harm

caused by the unlawful acts taken in furtherance of the conspiracy. These acts include the advertising of the free conference calling services, the provision of kickbacks, and the billing of access charges on traffic for which no access charges were due.

62. The unlawful actions taken during and in furtherance of the lawful agreements between Northern Valley and one or more of the Call Connection Companies have injured Sprint. Sprint is entitled to reasonable damages in an amount to be proven at trial.

COUNT SIX

(Violation of Communications Act)

63. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 62 of its Counterclaim as if fully set forth herein.

64. Northern Valley has billed and has collected millions of dollars in charges denominated as "terminating access" charges pursuant to a federal tariff imposing unlawfully high access charges, and based on an unreasonable practice of kickbacks. Because Northern Valley does not qualify as a "rural CLEC" under the FCC's regulations and federal law, it has no basis for setting its rates for access traffic at such a high level, and its tariff is void *ab initio* and it charges unreasonable pursuant to 47 U.S.C. § 201(b). Sprint is authorized to bring suit for damages for this conduct in this Court pursuant to 47 U.S.C. § 207.

65. Sprint is entitled to reasonable damages in the amount of the unlawful access charges paid to Northern Valley under Northern Valley's unlawful federal tariffs, plus reasonable costs and attorneys' fees, pursuant to 47 U.S.C. §§ 206, 207. Sprint will establish the amount of damages at trial.

66. Sprint is also entitled to an order enjoining Northern Valley from assessing charges on Sprint pursuant to its unlawful tariff. 28 U.S.C. §§ 2201, 2202.

67. Sprint is further entitled to a declaratory judgment and declaration of rights establishing that Northern Valley has no right to charge or collect access charges based on its unlawful tariff and practices. 28 U.S.C. §§ 2201, 2202.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Sprint requests that judgment be entered in its favor and against Northern Valley on each and all of its claims, including damages in an amount to be proven at trial, plus interest on that amount, reasonable costs and attorneys' fees, appropriate declaratory and injunctive relief, and any such other and further relief that the Court may deem just and equitable under the circumstances.

Dated at Sioux Falls, South Dakota, this 5th day of March, 2008.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ Cheryle Wiedmeier Gering

Electronically Filed
Cheryle Wiedmeier Gering
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
E-mail: cgering@dehs.com

Attorneys for Defendant Sprint Communications Company Limited Partnership

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant, hereby certifies that a true and correct copy of the foregoing "Answer and Counterclaim" was served by electric service by the Court upon:

James M. Cremer
Bantz, Gosch & Cremer, LLC
305 Sixth Avenue SE
P.O. Box 970
Aberdeen, SD 57402-0970
E-mail: jcremer@bantzlaw.com
Attorneys for Plaintiff

on this 5th day of March, 2008.

/s/ Cheryle Wiedmeier Gering
Electronically Filed

ACCESS SERVICE

Regulations, Rates and Charges
applying to the provision of Access Services
within a Local Access and Transport Area (LATA) or
equivalent Market Area for connection to interstate
communications facilities for Interstate Customers within
the operating territories of
NORTHERN VALLEY COMMUNICATIONS, L.L.C.

Access Services are provided
by means of wire, fiber optics, radio
or any other suitable technology
or a combination thereof.

**Effective November 16, 2004,
the terms, conditions and rates contained herein
replaces and cancels in its entirety
Northern Valley Tariff F.C.C No. 1.**

Exhibit A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Business Day

The term "Business Day" denotes the times of day that a company is open for business. Generally, in the business community, these are 8:00 or 9:00 a.m. to 5:00 or 6:00 p.m., respectively, with an hour for lunch, Monday through Friday, resulting in a standard forty (40) hour work week. However, Business Day hours for the Telephone Company may vary based on company policy, union contract and location.

Busy Hour Minutes of Capacity (BHMC)

The term "Busy Hour Minutes of Capacity (BHMC)" denotes the customer specified maximum amount of Switched Access Service minutes the customer expects to be handled in an end office switch during any hour in an 8:00 a.m. to 11:00 p.m. period for the Feature Group ordered. This customer specified BHMC quantity is the input data the Telephone Company uses to determine the number of transmission paths for the Feature Group ordered.

Call

The term "Call" denotes a customer attempt for which complete address information (e.g., 0-, 911, or 10 digits) is provided to the serving dial tone office.

Carrier Identification Code (CIC)

The term "Carrier Identification Code (CIC)" denotes a numeric code assigned by the North American Numbering Plan (NANP) Administrator for the provisioning of Feature Group B or Feature Group D Switched Access Services. The numeric code is unique to each carrier and is used by the Telephone Company to route switched access traffic to the Customer Designated Premises.

Carrier or Common Carrier

See Interexchange Carrier.

Exhibit A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Communications System

The term "Communications System" denotes channels and other facilities which are capable of communications between terminal equipment provided by other than the Telephone Company.

Customer(s)

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 both Interexchange Carriers (ICs) and End Users.

Customer Designated Premises

The term "Customer Designated Premises" denotes the premises specified by the customer for the provision of Access Service.

Exhibit A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

End Office

The term "End Office" denotes a local Telephone Company switching system where Telephone Exchange Service customer station loops are terminated for purposes of interconnection to each other and to trunks. This term includes Remote Switching Modules/Systems served by a Host Central Office in a different wire center.

End User

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.

Exhibit A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Interexchange Carrier (IC) or Interexchange Common Carrier

The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.

Interstate Communications

The term "Interstate Communications" denotes both interstate and foreign communications.

Intrastate Communications

The term "Intrastate Communications" denotes any communications within a state subject to oversight by a state regulatory commission as provided by the laws of the state involved.

Legal Holiday

The term "Legal Holiday" denotes days other than Saturday or Sunday for which the Telephone Company is normally closed. These include New Year's Day, Independence Day, Thanksgiving Day, Christmas Day and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed and other locally observed holidays when the Telephone Company is closed.

Exhibit A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Local Access and Transport Area (LATA)

The term "Local Access and Transport Area" denotes a geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.

Local Area Network

The term "Local Area Network" denotes a network permitting the interconnection and intercommunication of a group of computers.

Major Fraction Thereof

The term "Major Fraction Thereof" denotes any period of time in excess of 1/2 of the stated amount of time. As an example, in considering a period of 24 hours, a major fraction thereof would be any period of time in excess of 12 hours exactly. Therefore, if a given service is interrupted for a period of thirty-six hours and fifteen minutes, the customer would be given a credit allowance for two twenty-four hour periods for a total of forty-eight hours.

Message

The term "Message" denotes a "call" as defined preceding.

Exhibit A

ACCESS SERVICE

5. Switched Access Service

5.1 General

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer designated premises and an end user's premises. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided following.

Exhibit A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Busy Hour Minutes of Capacity (BHMC)

The term "Busy Hour Minutes of Capacity (BHMC)" denotes the customer specified maximum amount of Switched Access Service access minutes the customer expects to be handled in an end office switch during any hour in an 8:00 a.m. to 11:00 p.m. period for the Feature Group ordered. This customer specified BHMC quantity is the input data the Telephone Company uses to determine the number of transmission paths for the Feature Group ordered.

Call

The term "Call" denotes a customer attempt for which complete address information (e.g., 0-, 911, or 10 digits) is provided to the serving dial tone office.

Carrier or Common Carrier

See Interexchange Carrier.

CCS

The term "CCS" denotes a hundred call seconds, which is a standard unit of traffic load that is equal to 100 seconds of usage or capacity of a group of servers (e.g., trunks).

Central Office

See End Office.

By: Dean Anderson
President
P.O. Box 637
Clear Lake, South Dakota 57226

Exhibit B

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

C-Notched Noise

The term "C-Notched Noise" denotes the C-message frequency weighted noise on a voice channel with a holding tone, which is removed at the measuring end through a notch (very narrow band) filter.

Coin Station

See Pay Station.

Common Line

The term "Common Line" denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs.

Communications System

The term "Communications System" denotes channels and other facilities which are capable of communications between terminal equipment provided by other than the Telephone Company.

Customer(s)

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).

Exhibit B

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

End Office

The term "End Office" denotes a local Telephone Company switching system where Telephone Exchange Service customer station loops are terminated for purposes of interconnection to each other and to trunks. This term includes Remote Switching Modules/Systems served by a Host Central Office in a different wire center.

End User

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.

Exhibit B

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Installation and Repair Technician

The term "Installation and Repair Technician" denotes a Telephone Company employee who performs installation and/or repair work, including testing and trouble isolation, outside of the Telephone Company Central Office and generally at the customer designated premises.

Interexchange Carrier (IC) or Interexchange Common Carrier

The term "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate communication by wire or radio, between two or more exchanges.

Interstate Communications

The term "Interstate Communications" denotes both interstate and foreign communications.

Intrastate Communications

The term "Intrastate Communications" denotes any communications within a state subject to oversight by a state regulatory commission as provided by the laws of the state involved.

Exhibit B

ACCESS SERVICE

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Legal Holiday

The term "Legal Holiday" denotes days other than Saturday or Sunday for which the Telephone Company is normally closed. These include New Year's Day, Independence Day, Thanksgiving Day, Christmas Day and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed and other locally observed holidays when the Telephone Company is closed.

Line Side Connection

The term "Line Side Connection" denotes a connection of a transmission path to the line side of a local exchange switching system.

Local Access and Transport Area (LATA)

The term "Local Access and Transport Area" denotes a geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.

Major Fraction Thereof

The term "Major Fraction Thereof" denotes any period of time in excess of 1/2 of the stated amount of time. As an example, in considering a period of 24 hours, a major fraction thereof would be any period of time in excess of 12 hours exactly. Therefore, if a given service is interrupted for a period of thirty-six hours and fifteen minutes, the customer would be given credit allowance for two twenty-four hour periods for a total of forty-eight hours.

Message

The term "Message" denotes a "call" as defined preceding.

Exhibit B

ACCESS SERVICE

6. Switched Access Service

6.1 General

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer designated premises and an end user's premises. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in 6.1.3 and 6.5 through 6.9 following.

Rates and charges for Switched Access Service are set forth in 17.2 following. The application of rates for Switched Access Service is described in 6.4 following. Rates and charges for services other than Switched Access Service, e.g., a customer's InterLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Descriptions of such applicability are provided in 6.4.5, 6.5.1(H), 6.5.3, 6.6.1(G), 6.6.2(0), 6.7.1(F), and 6.8.1(E) following.

By: Dean Anderson
President
P.O. Box 920
Clear Lake, South Dakota 57226

Exhibit B