

**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

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

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**PUBLIC VERSION**  
**DECLARATION OF JAMES GROFT IN  
SUPPORT OF NORTHERN VALLEY  
COMMUNICATIONS, LLC'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

I, James Groft, being over the age of 18, declare as follows:

1. I am, and at all times relevant during the matters at issue in this litigation was, the Chief Executive Officer ("CEO") of Northern Valley Communications, L.L.C. ("Northern Valley").
2. Northern Valley was established in March of 1997 and began by providing dial-up Internet access to residents of northeast South Dakota.
3. Northern Valley is a Competitive Local Exchange Carrier ("CLEC").
4. In October of 1998, Northern Valley obtained long-term financing and officially began construction of a new telecommunications network for the city of Aberdeen, South Dakota.
5. In May of 2001, Northern Valley became a wholly-owned subsidiary of James Valley Cooperative Telephone Company of Groton ("James Valley"). James Valley is a cooperative that has served the area for over 50 years.

6. Northern Valley currently has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] local exchange subscribers. At no time has Northern Valley had more than fifty thousand local exchange subscribers.

7. Northern Valley does not maintain a local exchange tariff. Rather, Northern Valley previously had a general exchange catalog, which it is no longer required to maintain or file with the South Dakota Public Utilities Commission.

8. In addition to residences and businesses throughout Aberdeen and Redfield, Northern Valley has also attracted a number of high volume business customers that provide conference calling services to the public (the “Conference Call Providers”).

9. Northern Valley has competed for the business of these profitable customers as one means of ensuring that it can continue to be a viable provider of affordable local exchange services and to provide advanced telecommunications services in the areas that it serves.

10. Northern Valley has provided service to each of the Conference Call Providers pursuant to individually negotiated contracts, otherwise known as individual case basis contracts. The terms and conditions made available to the Conference Call Providers included discounts, incentives, services, or other business practices that were not made available to less profitable customers.

11. Northern Valley did not seek advanced permission from the South Dakota Public Utilities Commission and has not publicly filed its individual case basis contracts with the Conference Call Providers at any time.

12. With regard to all of the conference calling traffic at issue in this Motion for Summary Judgment, the conference bridges were located in Northern Valley’s facilities in either Aberdeen or Redfield.

13. The bridges were located in a different rack from the switches.

14. Global Conference Partners, Inc. (“Global Conference”) is a Conference Call Provider.

15. CLEC Connect, LLC (“CLEC Connect”) is a Conference Call Provider.

16. In or about December 2006, Northern Valley and CLEC Connect entered into a Wholesale Services Agreement. Exhibit 41 to Northern Valley’s Statement of Undisputed Facts is a true and correct copy of this agreement.

17. On or about January 6, 2009, CLEC Connect and Northern Valley executed a First Addendum to the February 2007 Wholesale Services Agreement. Exhibit 42 to Northern Valley’s Statement of Undisputed Facts is a true and correct copy of this agreement.

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

21. On or about October 30, 2010, CLEC Connect and Northern Valley executed a Telecommunications Service Agreement. Exhibit 45 to Northern Valley’s Statement of Undisputed Facts is a true and correct copy of this agreement. The Telecommunications Service

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<sup>1</sup> Northern Valley has been unable to locate an executed version of the Second Addendum to the Wholesale Services Agreement and does not believe that any such agreement was signed.

Agreement provides, *inter alia*, that it would have an effective date of July 23, 2010.

22. In or about October 2010 CLEC Connect and Northern Valley also executed a Marketing Agreement. Attached hereto as Exhibit 46 is a true and correct copy of this agreement. The Marketing Agreement provides, *inter alia*, that it would have an effective date of July 23, 2010.

23. CallAll, LLC (“CallAll”) is a Conference Call Provider.

24. In or about November 2007, Northern Valley and CallAll entered into a Service Agreement. Exhibit 47 to Northern Valley’s Statement of Undisputed Facts is a true and correct copy of this agreement.

25. CallAll and Northern Valley subsequently executed a First Addendum to their Services Agreement on January 6, 2009. Exhibit 48 to Northern Valley’s Statement of Undisputed Facts is a true and correct copy of this agreement.

26. Free Conferencing Corporation (“Free Conferencing”) is a Conference Call Provider.

27. Free Conferencing and Northern Valley executed a First Addendum to the January 29, 2009 Service Agreement on June 24, 2010. Exhibit 50 to Northern Valley’s Statement of Undisputed Facts is a true and correct copy of this agreement.

28. The First Addendum modified the compensation rate that was payable to Free Conferencing [REDACTED]

29. Northern Valley has nearly completed transferring all of its customers, including the Conference Call Providers and traditional local and residential customers, to the Metaswitch softswitch purchased in 2007.

30. Northern Valley has provided Sprint with Feature Group D (“FGD”) services,

which are only to be used with switched access traffic.

31. Sprint has made no demand that Northern Valley block their traffic or not allow it to terminate to the Conference Calling Services. Nor has Sprint come to the South Dakota Public Utilities Commission to seek authority to block its own traffic.

32. Beginning in or about September 2007, Sprint stopped paying Northern Valley for all terminating access charges, including both interstate and intrastate charges. Exhibits 62, 63, and 64 to Northern Valley's Statement of Undisputed Facts are true and correct copies of examples of dispute notices from Sprint.

33. On March 19, 2009, Sprint filed a dispute, disputing for the first time traffic that was terminated on Northern Valley's exchange during the period March 2007 to August 2007, totaling [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in additional disputes. Exhibit 64 to Northern Valley's Statement of Undisputed Facts is a true and correct copies of this dispute notice.

34. Northern Valley has repeatedly made demand of Sprint to pay the outstanding charges, including the amounts due for undisputed traffic. Exhibits 66-70 to Northern Valley's Statement of Undisputed Facts are true and correct copies of demand notices from Northern Valley to Sprint.

35. Sprint and other IXCs have twice tried unsuccessfully to have the South Dakota legislature prohibit LECs from assessing switched access charges for delivery of traffic to Conference Call Providers.

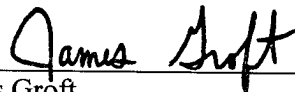
36. In both 2010 and 2011, Northern Valley actively worked to oppose this legislation, which it believed to be contrary to South Dakota's long-standing pro-competition, deregulatory approach to the relationship between LECs and their end users.

37. Sprint's withholding, and the litigation that has followed, has been costly for Northern Valley. In addition to litigating this proceeding, Northern Valley also has two actions against Sprint in the United States District Court for the District of South Dakota and, as noted above, has had to protect its interests in the South Dakota legislature.

38. These cases have drained Northern Valley of resources that it otherwise would have used to expand and upgrade its service offerings in the state.

**I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.**

Executed on this 6<sup>th</sup> day of July 2012.

  
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James Groft