**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	**NORTHERN VALLEY COMMUNICATIONS, L.L.C.'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Northern Valley Communications, L.L.C. ("Northern Valley"), by and through its undersigned counsel, and pursuant to SDCL § 15-6-56 and ARSD 20:10:01:01:02, respectfully submits this Memorandum in Support of Motion for Summary Judgment.

Claiming that it is improper for Northern Valley to assess intrastate switched access charges on calls terminating to conference calling providers (the "Conference Call Providers"), Sprint Communications Company, LP ("Sprint") has refused for nearly five years to pay Northern Valley for the switched access services Northern Valley provides Sprint. These switched access services enable Sprint's long-distance customers to reach Northern Valley's residential and business customers, including the Conference Call Providers that Sprint's customers utilize to collaborate for work, as well as personal, family, and religious matters. Without the utilization of Northern Valley's switched access services, Sprint's customers would be unable to complete the long distance calls they make to these services, and Sprint would be unable to assess the long distance charges it collects from its customers.

Northern Valley began providing telecommunications services to Conference Calling Providers in 2005 and Sprint paid Northern Valley for the switched access services for two years without complaint. In the fall of 2007, Sprint initiated a business and litigation strategy to drive Northern Valley, other LECs, and the conference-calling providers out of the business. The business strategy employed by Sprint consists of unilaterally and unlawfully withholding payment from Northern Valley, for *all calls*, including undisputed calls to Northern Valley's traditional residential and business customers, even though Sprint collects fees from its own customer for each of these calls. As repeatedly demonstrated through its conduct at this Commission (e.g., repeatedly refusing to remove improper redactions and propounding over 100 interrogatories on Northern Valley), Sprint's litigation strategy is to engage in a protracted, costly, and multi-prong legal battle in the federal courts in South Dakota, and regulatory proceedings at the Federal Communications Commission and before this Commission, in its efforts to avoid paying for the services that it has received.

Sprint's unpaid switched access service charges, including interstate and intrastate traffic, total nearly **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** In comparison to Sprint, Northern Valley is a small company. These prolonged legal have zapped it of important resources and distracted it from its core mission of providing advanced telecommunications to rural South Dakota. All the while, Northern Valley's conduct has been fully consistent with South Dakota law, which expressly recognizes and

protects the right of local exchange carriers to compete for large, profitable customers, such as the Conference Call Providers.

This motion seeks summary judgment on charges due from Sprint for calls Sprint has terminated and continues to terminate to Northern Valley's network pursuant to its intrastate access tariff. Specifically, Northern Valley seeks summary judgment with regard to the following:

1) **Undisputed Traditional Traffic:** Sprint has withheld amounts due to Northern Valley for intrastate traffic, relying on its AP-debit balance theory, which this Commission has rejected. Accordingly, Sprint should be declared liable to pay Northern Valley for traffic originating or terminating to traditional residential and business customers, which Sprint does not dispute is due and owing to Northern Valley. Sprint should also be required to pay the interest accrued on this amount.[1]

2) **Global Conference Partners:** Intrastate access charges for traffic terminating to Global Conference Partners ("GCP") for the period from November 2007 to present.[2]

3) **One Rate:** Intrastate access charges for traffic terminating to One Rate Conferencing, LLC ("One Rate") for the period April 2007 to present.

4) **CLEC Connect:** Intrastate access charges for traffic terminating to CLEC Connect, LLC ("CLEC Connect") for the period September 2007 to May 2011.

5) **Call All:** Intrastate access charges for traffic terminating to CallAll, LLC ("CallAll") for the period December 2007 to February 2008.

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[1] Sprint has begun paying a portion of Northern Valley's charges which Sprint attributes to "traditional" customers, as compared to Northern Valley's conference call company customers. Sprint, however, has offset what it considers to be overpayments on prior conference call traffic and, as such, continues to withhold significant sums related to traditional traffic.

[2] For purposes of this Motion, Northern Valley is not seeking summary judgment on traffic to Global Conference Partners for the period of November 2005 to November 2007 because, during that time period, GCP's conference bridge was co-located in the central office of James Valley Telephone Company in Groton, South Dakota. Northern Valley is also not seeking summary judgment on traffic terminated to National Communications Group or VAPPS, Inc., whose conference bridges were located in Groton. The exclusion of this traffic from the Motion for Summary Judgment is without prejudice to Northern Valley's ability nevertheless to seek compensation for the service provided in terminating this traffic pursuant to its alternative count.

6) **Free Conferencing:** Intrastate access charges for traffic terminating to Free Conferencing Corporation ("Free Conferencing") for the period May 2009 to present.

7) **Sang:** Intrastate access charges for traffic terminating to Sang Capital Group, LLC for the period August 2009 to present.

REGULATORY AND FACTUAL BACKGROUND

Northern Valley is a telecommunications company serving business and residential customers in Aberdeen, Redfield, and surrounding areas. (*See, e.g.,* SOF 1 – 7) Sprint is an interexchange carrier (an "IXC," commonly known as a "long-distance carrier") that provides long-distance phone service to its customers throughout the country. (SOF 178) To do so, Sprint uses phone lines owned by local phone companies (such as Northern Valley), which are commonly referred to as local exchange carriers ("LECs"). (SOF 178)

Sprint utilized, and continues to utilize, originating and terminating access services provided by Northern Valley in order to complete the long-distance calls to Northern Valley's customers. (SOF 179 & 189) Without Northern Valley's services, Sprint's customers' call could not be completed. (SOF 179 & 189) For many years, however, Sprint has refused to pay Northern Valley for the use of its network. (SOF 181) Sprint's excuse for not paying hinges on Sprint's claims that the relationship between Northern Valley and Conference Call Providers constitutes an improper **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** scheme to increase the volume of long-distance traffic handled by Northern Valley. (SOF 42 & 185) Specifically, Sprint claims that conference-calling companies are not "end users" under Northern Valley's tariff. (SOF 195) Sprint's arguments, and the support it will offer to defend its conduct, however, are wholly inconsistent with South Dakota law, which must guide this Commission's decision-making.

A. Northern Valley's Local Exchange Service Offerings are Completely Unregulated

At no time has Northern Valley had more than fifty thousand local exchange subscribers. (SOF 8) As a result, SDCL 49-31-5.1 exempts Northern Valley from a host of regulatory obligations, including, but not limited to:

- SDCL 49-31-1.4, Price regulation: A "procedure used by the commission to approve the charge for an emerging or noncompetitive telecommunications service which is not based on rate of return regulation."
- SDCL 49-31-4.3, Accounts of other businesses – Consideration by commission -- Disallowance of unreasonable profits – Burden of proof: Allows the commission to examine the books and records of non-telecommunications businesses for purposes of determining the costs of operations to be considered for rate of return regulation and price regulation for noncompetitive services. Allows the commission to consider this information for avoiding unreasonable profits.
- SDCL 49-31-5, Promulgation of rules for conduct of business: Allows the commission to regulate telecommunications service and promulgate rules regarding a host of issues, including "(1) Requirements for telecommunications companies to maintain and make available to the public and the commission records and utility tariffs;" "(3) Requirements that telecommunications companies must follow regarding procedures for billing customers;" and "(4) Requirements for filing and noticing tariff changes."

- SDCL 49-31-12, Commission to make rate or price schedule – Different rates or prices for different companies or services – Revision of rates – Notice to companies: Directs the commission to make and revise a schedule of fares and rates for each telecommunication company, except for those services which are fully competitive.
- SDCL 49-31-12.2, Duties of regulated companies concerning publication and filing of rates or prices: Requires telecommunication companies to keep a tariff available for public inspection regarding the rates or prices for noncompetitive and emerging competitive telecommunications services. Prevents a telecommunication company from increasing rates or prices for noncompetitive services without 30 days' notice. Prevents a telecommunications carrier from deviating from its published rates for noncompetitive and emerging competitive telecommunications services. Requires, upon the request of the commission, a telecommunications carrier to file with the commission copies of any contracts, agreements or arrangements with other companies relating to noncompetitive and emerging competitive telecommunications services.

Moreover, on October 29, 2003, in response to a complaint filed by Qwest Corporation, the Commission voted to "reclassify local exchange and other related services as fully competitive in all Qwest exchanges in South Dakota." (*See* SOF 9 (*citing In the Matter of the Application of Qwest Corporation to Reclassify Local Exchange Services as Fully Competitive*, Order Reclassifying Qwest's Local Exchange Service as Fully Competitive; Order Approving Settlement Agreement; Notice of Entry (TC 03-057))) Therefore, because Northern Valley provides local exchange service in Qwest exchanges, its local exchange service is deemed to be fully competitive. Thus, even if it was not otherwise excused from the obligations as a result of its size, Northern Valley's local exchange services would not be subject to commission pricing

regulation, SDCL 49-31-12, Northern Valley would not be required to either file or strictly adhere to a local exchange tariff, SDCL 49-31-12.2 and SDCL 49-31-12.7, and thus there would be no prohibition against it deviating from its published rates, *id.* As a result of the foregoing, Northern Valley does not maintain a local exchange tariff. (SOF 10) Nor is such a document maintained in the Commission's general exchange catalog. (SOF 11)

B. The Commission Continues to Regulate the Reasonable Rates for Northern Valley's Intrastate Access Services

Unlike Northern Valley's local exchange services, this Commission has always overseen the rates in Northern Valley's intrastate access tariff. On September 13, 1999, Northern Valley first filed for a three-year exemption from filing cost-based switched access rates and for approval of its intrastate switched access Tariff No. 1. (SOF 12) That request was granted on October 20, 1999. (SOF 12) On October 21, 2002, Northern Valley filed for an extension of its exemption from filing cost-based switched access rates, which was granted on December 2, 2002. (SOF 13)

On December 1, 2005, Northern Valley again filed for an extension of its exemption from filing cost-based switched access rates. (SOF 14) On February 24, 2006, Commission staff filed a memo making recommendations to the Commission about Northern Valley's December 1, 2005 petition. (SOF 15) Commission staff disputed whether Northern Valley had the financial, technical and managerial ability to provide a cost study, but nevertheless went on to conclude that Northern Valley should not be required to set its access rates based on cost. (SOF 15) According to the staff, "The FCC has made it clear that they will not subject CLECs to the same regulatory requirement as the ILECs and thus does not require CLECs to use the Uniform System of Account. . . . Additionally, the FCC does not wish to require CLECs to file costs studies supporting access rates, and as will be discussed later, the FCC has also ruled that the

costs of the CLECs are irrelevant when tariffing an access rate. Given these reasons and the FCC's rationale, staff supports granting NVC's request for an exemption from filing cost based rates on those grounds." (SOF 15) In the memo, the staff also objected to Northern Valley's proposal to maintain its intrastate access rate of $0.1325, the LECA Plus rate then in effect. (SOF 15)

On May 19, 2006, the Commission received a Joint Motion for Approval of Settlement Stipulation, a Settlement Stipulation between Northern Valley and Commission staff, and a memorandum from staff encouraging that the stipulation be approved. (SOF 16) On June 5, 2006, the Commission approved the stipulation and Northern Valley's request for an extension of its exemption from establishing company specific cost-based switched access rates. (SOF 16)

Pursuant to the 2006 Stipulation Order, Northern Valley decreased its intrastate access rates from $0.1325 to $0.1250 effective on July 1, 2006. (SOF 17) Northern Valley further decreased its intrastate switched access rates from $0.1250 to $0.11150 effective on July 1, 2007. (SOF 17)

On May 21, 2009, Northern Valley filed a request that the Commission approve an extension of its exemption from developing company specific cost-based switched access rates and further requested that the Commission maintain the rate set forth in its tariff for the duration of the extension period. (SOF 18) Midcontinent Communications, Qwest Communications Company, LLC and AT&T Communications of the Midwest, Inc. were granted leave to intervene in the docket. (SOF 18)

On June 4, 2009, Northern Valley filed a Motion for Temporary Approval of Switched Access Rates, which was unanimously granted on June 23, 2009. (SOF 19) Pursuant to that motion, Northern Valley's intrastate access rate remained in effect. (SOF 19)

On November 9, 2010, the Commission voted to direct the previously-existing rulemaking docket, RM05-002, be used to examine whether new rules should be set for the establishment of CLEC switched access rates. (SOF 20) In that docket, the Commission adopted new rules for CLEC intrastate access rates that became effective on May 30, 2011. (SOF 21) Pursuant to newly-adopted ARSD 20:10:27:02.01, a "competitive local exchange carrier shall charge intrastate access rates that do not exceed the intrastate access rate of the Regional Bell Operating Company operating in the state." On July 26, 2011, the Commission voted to approve Northern Valley's tariff revisions made to effectuate the rate reduction mandated by the Commission's new rules. (SOF 22) These tariff revisions reduced Northern Valley's intrastate access rate to $0.06042.

Finally, on June 11, 2012, Northern Valley filed revised intrastate switched access rates. (SOF 23). Consistent with a November 18, 2011 order of the Federal Communications Commission modifying the intercarrier compensation system, and 47 C.F.R. § 51.911(b)(5), Northern Valley's intrastate access rates have been reduced to $0.026142/mou as of July 3, 2012, which mirrors the interstate switched access rates of the South Dakota Regional Bell Operating Company. (SOF 23)

C. Northern Valley's Intrastate Switched Access Services

At all times relevant to this dispute, "Switched Access" has been defined by South Dakota law as "any exchange access service purchased for the origination and termination of interexchange telecommunications services which includes central office switching and signaling, local loop facility, or local transport." SDCL § 49-31-1(27).

At all times relevant to this dispute, Northern Valley has concurred in "the rates, terms and conditions . . . [of] the Local Exchange Carrier Association," except as otherwise specifically

set forth in its South Dakota Switched Access Services tariff. (SOF 24) The LECA tariff has provided that the term "Access Minutes," *inter alia*, "denotes customer usage of exchange facilities in the provision of intrastate service." The LECA tariff further describes Switched Access Service as follows:

> 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 plan of the Telephone Company. 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. Specific references to material describing the elements of Switched Access Service are provided in 6.1.3 and 6.5 through 6.9 following.

(SOF 31) The LECA tariff further provides that Feature Group D "switching, when used in the terminating direction, may be used to access valid NXXs in the LATA, time or weather announcement services of the Telephone Company, community information services of an information service provider, and other customers' services (by dialing the appropriate codes) when such services can be reached by using valid NXX codes. . . ." (SOF 32)

At all times relevant to this dispute, the LECA tariff has defined the term "Customer" to mean, in pertinent part, "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 but not limited to Interexchange Carriers (ICs) . . . ." (SOF 26) The LECA tariff has defined the term "End User" to mean "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." (SOF 27)

The LECA tariff also recognizes "Individual Case Basis" contracts, which is defined as a "condition in which the regulations, if applicable, rates and charges for an offering under the provisions of this tariff are developed based on the circumstances in each case." (SOF 28)

STANDARD

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law." All reasonable inferences drawn from the facts are construed in favor of the nonmoving party, *Rehm v. Lenz*, 547 N.W.2d 560, 564 (S.D. 1996), while the moving party must show the absence of any genuine issue of material fact. *Wilson v. Great N. Ry. Co.*, 83 S.D. 207, 212 (1968).

"Only disputes over facts that might affect the outcome of the case under the governing substantive law will properly preclude summary judgment." *Alliance Commc'ns Co-op., Inc. v. Global Crossing Telecomms., Inc.*, 663 F. Supp. 2d 807, 818 (D.S.D. 2009) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A motion for summary judgment cannot be defeated by "[t]he mere existence of a scintilla of evidence in support of the [nonmoving party's] position . . ." *Anderson*, 477 U.S. at 252. And while the burden of showing the absence of a genuine issue of material fact rests with the moving party, *see, e.g., Alliance Commc'ns*, 663 F. Supp. 2d at 818, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

ARGUMENT

I. THE COMMISSION SHOULD DECLARE THAT SPRINT HAS VIOLATED THE TARIFF AND IS LIABLE FOR THE "TRADITIONAL" RESIDENTIAL AND BUSINESS TRAFFIC THAT IT HAS WITHHELD

This Commission and the Iowa Utilities Board have both now considered and rejected Sprint's claim that it can unilaterally withhold payments related to undisputed traffic as a self help mechanism to offset amounts that it has retroactively disputed. *See In the Matter of the Complaint Filed by South Dakota Network, LLC against Sprint Communications Company LP Regarding Failure to Pay Intrastate Equal Access Charges and to Immediately Pay Undisputed Portions of SDN's Invoices,* Order Granting Partial Summary Judgment; Order Granting Leave to File Counterclaims; Order Denying Dismissal of Counterclaim, TC09-098 (SDPUC Jan. 18, 2012) ("*SDN Partial Summary Judgment Order*"); *Sprint Communications Company, LP v. Iowa Telecommunications Services, Inc.*, Order, Docket No. FCU-2010-0001, 62-71 (IUB Feb. 4, 2011) ("*ITS Order*") attached hereto as **Exhibit A**. Both have concluded that an IXC who has a dispute with a LEC cannot use the undisputed services to offset and recoup purported over payments on the disputed services. Despite these clear rulings, Sprint has continued to refuse to disgorge the funds that it withheld from Northern Valley for the access services that Northern Valley has undisputedly provided to Sprint for "traditional" residential and business customers. Accordingly, the Commission should declare that Sprint is clearly liable for those amounts and that it has acted unlawfully in withholding them.

In this very case, this Commission granted summary judgment in favor of South Dakota Networks and against Sprint. *See SDN Partial Summary Judgment Order* at 2-4. There, Sprint had disputed only a portion of the invoices sent to it by SDN. *Id.* at 3. Sprint also attempted to retroactively dispute past invoices. *Id*. Sprint demanded a refund of past payments and created a

debit balance on the account. *Id.* While approving the payment of undisputed amounts, those amounts were applied to reduce the account payable debit balance created by Sprints' refund claim for prior amounts paid to SDN. *Id.* The Commission determined that "Sprint's practice of offsetting prior payments with undisputed portions of the bills" was improper. *Id.* at 4.

The Iowa Utilities Board reached the same conclusion in the *ITS Order*. There, the Board described how Sprint "established an AP Debit Balance account by placing on its books the value of the amounts Sprint determined it had overpaid for a past period as if they were amounts *owed* to Sprint from Iowa Telecom." *ITS Order* at 68. Because the "'overpayment' amounts were larger than the undisputed charges," Sprint claimed that it "resulted in no current account payable amount owed to Iowa Telecom." *Id.* The Board observed that Iowa Telecom's tariff "implies that only disputed mounts can be withheld, but does not directly state that undisputed amounts must be paid." *Id.* at 69. For example, the tariff provided that "a late payment charge will apply to disputed mounts withheld pending settlement of the dispute if it is determined in the Telephone Company's favor." *Id.* (citing 2.4.1(D)(1) of the ITS tariff). The Board concluded as follows:

> Because the tariff includes language regarding the treatment of disputed amounts, it contemplates the payment of undisputed amounts. Further, the timely payment of undisputed amounts is a common practice for all types of business transactions. Therefore, Sprint acted inappropriately by establishing its AP Debit Balance which, in effect, withheld amounts Sprint had not disputed.
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> * * *
>
> The tariff at issue in this case contemplated withholding of disputed balances but did not contemplate Sprint's use of an AP Debit Balance account. Sprint's use of the debit balance account amounted to unilateral withholding of undisputed payments. The Board concludes that by using an AP Debit Balance account, Sprint did not properly dispute Iowa Telecom's switched access charges as permitted by Iowa Telecom's tariff.

Id. at 69-71.

The same result reached by this Commission and the Iowa Utilities Board should follow here. Having now had its AP debit balance theory twice rejected, Sprint's decision to continue to defy the rationale of those decisions cannot be maintained in good faith. Just as in those cases, Northern Valley has, without dispute, provided access services to Sprint for traffic terminating to residential and business customers in Northern Valley's service territory. (SOF 184; 187; 190) Sprint's disputes have related only to the conference calling traffic about which it has complained in this case. (SOF 184 & 185) Nevertheless, Sprint refused to pay Northern Valley for undisputed traffic for many years, until such time as it "recouped" all of the amounts it claims to have improperly paid for conference calling traffic before it began withholding (the so-called "AP Debit Balance"). (SOF 181; 184-188; 190) Such withholding is not sanctioned by Northern Valley's intrastate access tariff (which is the widely used LECA tariff). Rather that tariff provides that "if a payment or any portion of a payment is received by the Telephone Company after a payment date . . . then a late payment penalty shall be due to the Telephone Company." LECA Tariff 2.4.1(C)(2), Original Page 2-32. (Exhibit 15 to SOF) Further, the tariff provides that "[l]ate payment charges will apply to amounts withheld pending settlement of the dispute," and applies a limited timing exception on those penalties "when the customer disputes the bill on or before the payment date *and pays the undisputed amount on or before the payment date*. . . ." *Id.*, LECA Tariff 2.4.1(D), Original Page 2-32 (emphasis added). Thus, like the tariff considered in the *ITS Order*, "[b]ecause the tariff includes language regarding the treatment of disputed amounts, it contemplates the payment of undisputed amounts." *ITS Order* at 69.

Here, because Northern Valley subscribes to the standard form of the LECA tariff, the Commission should be particularly concerned about condoning Sprint's decision to unilaterally withhold amounts due on undisputed traffic and therefore should conclude that Sprint's

withholding of these amounts is improper and unlawful. Summary Judgment should be entered deciding that Sprint is liable for traditional, undisputed traffic and that it is required to pay the late payment penalties on this traffic.

II. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO THE CONFERENCE CALLING TRAFFIC

As discussed more fully below, Sprint's reasons for refusing to pay intrastate access charges on traffic terminating to the Conference Call Providers are without merit. The undisputed facts establish that Sprint has received access service as defined by South Dakota law and in a manner that is fully consistent with Northern Valley's intrastate access tariff (the LECA tariff). Moreover, when properly understood, Sprint's arguments, and the prior IUB and FCC cases that Sprint will offer in support of its position, all rest on the notion that Northern Valley had some obligation to maintain and abide by a local exchange tariff in providing its services to the Conference Call Providers. In reality, however, South Dakota law imposes no such obligation and Northern Valley was free to enter into competitive contracts with the Conference Call Providers in order to attract and retain their business. Thus, Sprint's arguments fail as a matter of law, and Northern Valley is entitled to summary judgment on all of the conference calling traffic terminated to Northern Valley's certificated exchange that is the subject of this motion.

A. NORTHERN VALLEY HAS PROVIDED "ACCESS SERVICE" AS DEFINED BY SOUTH DAKOTA LAW

There can be no dispute that, with regard to the calls terminating to the Conference Calling Providers, Northern Valley has provided "Switched Access" access within the meaning of South Dakota law. SDCL § 49-31-1(27) defines South Dakota law as "any exchange access service purchased for the origination and termination of interexchange telecommunications

services which includes central office switching and signaling, local loop facility, or local transport." (SOF 30)

First, the statute makes clear that switched access has been provided when "*any* exchange access service" is provided for the "origination and termination of interexchange telecommunications services." Here, there is no dispute that Sprint is sending interexchange telecommunications across Northern Valley's network for "termination" to the conference call bridges. Because none of the traffic at issue in this dispute is re-originated (SOF 47), there can be no dispute that the conference calls are terminating. Indeed, the Federal Communications Commission has held that conference calls terminate at the bridge – a holding that remains undisturbed. *See Qwest Commc'ns Corp. v. Farmers and Merchants Mutual Tel. Co.*, 22 FCC Rcd. 17973, ¶¶ 30 – 34 (2007), *reconsidered on other grounds*, 24 FCC Rcd. 14801(2009), *reconsideration denied*, 25 FCC Rcd. 3422 (2010), *aff'd* 668 F.3d 714 (D.C. Cir. 2011). There, the FCC stated as follows:

> Qwest argues that traffic delivered to the conference calling companies does not terminate in Farmers' exchange, but merely passes through it to terminate elsewhere. We find, however, that Farmers does terminate the traffic at issue, and therefore we deny Counts II and III of the Complaint.
>
> Qwest correctly notes that only a carrier whose facilities are used to originate or terminate a call may impose access charges. The Commission has generally used an "end-to-end" analysis in determining where a call terminates. As Qwest points out, the Commission has focused on the end points of the communications, "and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."
>
> Qwest argues that calls to the conference calling companies are ultimately connected to -- and terminate with -- users in disparate locations. According to Qwest, when a caller dials one of the conference calling companies' telephone numbers, the communication that he or she initiates is not with the conference calling company, but with other people who have also dialed in to

> the conference calling company's number. Qwest argues that such calls terminate at the locations of those other callers, and that Farmers is providing a transiting service, not termination. Farmers' view of the calls, however, is that users of the conference calling services make calls that terminate at the conference bridge, and are connected together at that point. We find Farmers' characterization of the conference calling services to be more persuasive than Qwest's.
>
> Qwest's view of how to treat a conference call leads to anomalous results. For instance, suppose parties A, B, C, and D dial in to a conference bridge. According to Qwest, A has made three calls, one terminating with B, one with C, and one with D. But in fact, B, C, and D have actually initiated calls of their own in order to communicate with A. What Qwest calls the termination points are actually call initiation points. Moreover, under Qwest's theory, the exchange carriers serving B, C, and D would all be entitled to charge terminating access. In fact, each of those carriers would be entitled to charge terminating access three times -- B's carrier could charge for terminating calls from A, C, and D, and so forth. This conference call with four participants would incur terminating access charges twelve times. Qwest has not addressed this logical consequence of its theory, nor has it offered any evidence that conference calls are treated as terminating with the individual callers for any purpose beyond the circumstances of this case.
>
> Qwest tries to analogize this case to calling card platform cases in which the Commission applied an end-to-end analysis and found that calls dialed in to a calling card platform and then routed on to another party terminated with the ultimate called party, not at the platform. In other words, the Commission found that there was one call (from A to B via the calling card platform), not two (A to the platform plus platform to B). This argument is circular, however. It assumes that the calls at issue are routed on to another party, when the very issue to be decided here is whether that is the case. The calling card cases merely address the issue of whether the call terminates at the platform if, in fact, it is routed on to another party beyond the platform.

Id. (footnotes omitted). Because the calls are interexchange calls that terminate at the conference bridge, it follows that Northern Valley provide access service for the "termination of interexchange telecommunications services," as required by SDCL § 49-31-1(27).[3]

[3] This conclusion is further reinforced by the FCC's new intercarrier compensation rules,

Moreover, Northern Valley provides the functionality commonly associated with switched access when it delivers Sprint's traffic for termination to the conference call bridges. South Dakota Network provides centralized equal access service for calls originating or terminating on Northern Valley's network. (SOF 33) To provide access services to long-distance carriers, including Sprint, and to connect its local customers to those long-distance carriers, Northern Valley leases circuit capacity from SDN to carry the traffic from Sioux Falls to Groton, South Dakota. (SOF 34) The capacity Northern Valley leases is separate than the capacity that its parent company James Valley leases. (SOF 34) All of the traffic, whether it is destined to a conference call provider or other customers, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

Initially, all of Northern Valley's traffic was switched by an EWSD switch located in Groton. (SOF 35) **[BEGIN CONFIDENTIAL]** [redacted]

which specifically adopt new rules for *tariffed* interstate access services for conference calling traffic. *See In re Connect America Fund*, WC Docket No. 10-90, FCC 11-161, Report & Order & Further Notice of Proposed Rulemaking, 2011 WL 5844975, ¶¶ 656-701 (FCC Nov. 18, 2011) ("*Connect America Fund Order*").

[4] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

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Because Northern Valley is providing intrastate access services within the meaning of South Dakota law, the Commission should declare that Northern Valley's intrastate tariff, and the rates therein, are fully applicable to the disputed traffic.[5] As a matter of policy, the Commission

[5] Sprint has conceded that it is not unlawful for Northern Valley to provide telecommunications services to Conference Call Providers. Sprint's Responses to SDN's Second Set of Interrogatories, Doc Requests, and RFAs, Int. 5, 6, 7, 8, 10 (stating that "Sprint does not believe it has alleged the traffic is "illegal" and that "Sprint does not believe it has alleged that the traffic violates the law."). (SOF 182) And, Sprint has made no demand that Northern Valley block its traffic or not allow it to be terminated to the Conference Calling Services. Groft Decl.,

should reject any invitation by Sprint to conclude that the LECA intrastate access tariff does not extend to the fullest extents of South Dakota's statutory definition of "intrastate access" or that the definitions therein circumscribe the meaning of intrastate access services.

Confirming that the LECA tariff, which is utilized by the state's smallest carriers, extends to the fullest boundaries of intrastate access services serves a host of important policy objectives. For example, it helps to avoid a future in which small LECs consistently have their resources drained through needless litigation with larger IXCs that seek to exert their market power through the threat of litigation, as Sprint sought to do when it brought Northern Valley into this proceeding while the same claims were already pending in federal court. It also avoids a scenario where these small LECs would be required to abandon the LECA tariff and expend considerable resources trying to "bullet proof" their tariffs out of fear that every possible term or definition could be used as an excuse for refusing to pay for the services that have been provided. Again, the IXCs should not able to use their size to bully LECs into submission, as Sprint has sought to do.

Similarly, the Commission would reinforce a pro-competitive policy. As technologies change, and as the number of land line subscribers are reduced, local exchange carriers will need more, not less, flexibility to compete for larger end users. This competition is what Congress intended when it adopted the 1996 Telecommunications Act and it is what the South Dakota legislature intended in 1998 when it adopted an amendment offered by then-Senator Everist (R) to add the provision codified as SDCL 49-31-84. The statute provides:

> It is in the public interest and essential that local exchange telecommunication companies over all of South Dakota continue to be viable providers of affordable local exchange services. Local exchange telecommunication companies receive substantial

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¶ 31. Nor has Sprint come to this Commission to seek authority to block its own Traffic. *Id.* (SOF 183)

> revenue necessary to support the exchange from a minority of their customers. Local exchange telecommunication companies must be allowed to compete to keep their profitable customers in order to maintain the viability of local exchanges.
>
> * * *
>
> Notwithstanding any other provisions of chapter 49-31, any telecommunication company may grant any discounts, incentives, services, or other business practices necessary to meet competition.

See Journal of the Senate, Seventy-Third Session, Thirty-First Day (Feb. 24, 1998), available at http://legis.state.sd.us/sessions/1998/journal/jrnS02241400.htm (last accessed: July 8, 2012); SDCL 49-31-84.

It would make little sense for the legislature to sanction efforts by local exchange carriers to compete for local exchange customers on one hand, and for the Commission then to deny those local exchange carriers the access charges associated with those calls on the other. And, indeed, Sprint's preferred course of action would only serve to create a dangerous precedent whereby IXCs repeatedly call on the Commission to intrude into and pass judgment on the relationships between LECs and their end user customers. Such governmental intrusion is both unwarranted and unwise, as it would serve only to divert resources away from providing advanced telecommunications services in South Dakota, as Sprint has forced Northern Valley to do. (SOF 194). Therefore, the Commission can and should grant summary judgment and declare that the calls that Sprint's customers made to Global Conference Partners (since November 2007), One Rate, CLEC Connect, Call All, Free Conferencing, and Sang are subject to the intrastate access rates contained in Northern Valley's tariff.

B. NORTHERN VALLEY'S TARIFF IS FULLY APPLICABLE TO THE CONFERENCE CALLING SERVICES

Even if the Commission were to further examine the terms of the LECA tariff and the facts in this case, there are no material facts in dispute.[6] Northern Valley has provided Sprint intrastate access services consistent with the LECA tariff.

As previously noted, at all times relevant to this dispute, Northern Valley has concurred in "the rates, terms and conditions . . . [of] the Local Exchange Carrier Association." (SOF 24). Not dissimilar to the South Dakota statute, the LECA tariff defines the term "Access Minutes," as "customer usage of exchange facilities in the provision of intrastate service." (SOF 25). The tariff defines the term "Customer" to mean, in pertinent part, "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 but not limited to Interexchange Carriers (ICs) . . . ." (SOF 26) Thus, when Sprint, the Customer, utilizes Northern Valley's "exchange facilities in the provision of intrastate service," it is receiving "Access Minutes," as defined by the LECA tariff.

The tariff further describes Switched Access Service as follows:

> 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 plan of the Telephone Company. 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. Specific references to material describing the elements of Switched Access Service are provided in 6.1.3 and 6.5 through 6.9 following.

[6] Details regarding each of the Conference Call Providers and the contracts governing their relationship with Northern Valley are included in the Statement of Undisputed Facts as follows: Global Conference Partners (SOF 48 – 79); A+ Conferencing (SOF 80 – 106); CLEC Connect (SOF 107 – 129); CallAll (SOF 130 – 140); Free Conferencing (SOF 141 – 157); Sang (158 – 177).

(SOF 31)

The undisputed facts establish that Northern Valley provides "for the use of common terminating, switching, and trunking facilities," (s*ee* SOF 66, 99, 122, 137, 150, 170), and that Northern Valley allows Sprint to transmit its customer's calls to the Conference Call Providers who have separate rack space in Northern Valley's central office (*see* SOF 66, 99, 122, 137, 150, 170). Based on these facts, the Commission should conclude as a matter of law that Northern Valley terminates Sprint's call to an end user's premises. (*See* SOF 29 & 46)

A conclusion that the Conference Call Providers are properly considered "end users"[7] and their rack space "their premises," is bolstered by other parts of the LECA tariff and its discussion of Feature Group D services. Specifically, the LECA tariff provides that Feature Group D "switching, when used in the terminating direction, may be used to access valid NXXs in the LATA, time or weather announcement services of the Telephone Company, community information services of an information service provider, and other customers' services (by dialing

[7] Puzzlingly, the LECA tariff defines the term "End User" to mean "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." (SOF 27). Northern Valley submits that this definition must be the result of a scrivener's error, as this Commission does not have jurisdiction over "interstate or foreign telecommunications service," and as such it would be improper for the Commission to examine an end user's subscription to interstate services as the basis for concluding whether they were an end user for purposes of assessing intrastate access charges on the IXC.

Rather, as Sprint has already advised this Commission, the appropriate inquiry is whether the Conference Call Companies are "end users of local exchange service." Transcript of December 20, 2011 Hearing, at 16:21 – 23 ("The reason that those access charges aren't due is that these are calls that are not being delivered to end users of local exchange service."); *id.* 37:16-17 ("They're not, as I said earlier, made to legitimate end users of local exchange service."). Transcript of May 17, 2012 Hearing at 66:13 – 21 ("Sprint's affirmative case . . . seeks a determination that the relationship between Northern Valley" and the 'conference service providers' . . . are not local exchange service under South Dakota law."); *id.* at 67:5 – 10 ("The regulatory regime that applies to that relationship and governs those charges and will help determine whether this is a relationship consistent with law, consistent with the regulatory regime and constitutes local exchange service, that's all decided under South Dakota Law.").

the appropriate codes) when such services can be reached by using valid NXX codes. . . ." (SOF 32; *see also* SOF 180) In other words, the LECA tariff expressly states that calls to a variety of services, including information service providers, such as the Conference Call Providers, are subject to the tariffed access charges when the call is dialed using a standard telephone number. Indeed, the understanding that time and weather announcements services provided by the Telephone Company, which are clearly going to be located in the Central Office, are subject to access charges must dispense with any notion that co-located services cannot be subject to access charges.

Sprint has utilized Northern Valley's exchange facilities, including its switch, transport network, and local loop in order to complete its customer's long distance calls to the Conference Call Providers at issue in this motion. That is all its tariff requires. It follows that Northern Valley has provided service consistent with its tariff and summary judgment is warranted.

C. SPRINT'S ARGUMENTS ARE ABOUT NORTHERN VALLEY'S UNREGULATED LOCAL EXCHANGE SERVICE, NOT ITS REGULATED ACCESS SERVICE

Despite the undisputed facts, which demonstrate that Sprint has received access service as defined by law and by tariff, Sprint will nevertheless attempt to convince the Commission that there is some basis to dispute whether the Conference Call Providers should be considered "end users" for purposes of applying the tariff. To make this case, Sprint will rely upon inapposite decisions from the Iowa Utilities Board and the FCC, whose holdings are entirely inconsistent with clear South Dakota law on point.

The first decision to conclude the conference call providers were not end users under a tariff was released by the Iowa Utilities Board in *Qwest Communications Corp. v. Superior Tel. Coop.*, Docket No. FCU-07-2, 2009 WL 3052208 (IUB Sep. 21, 2009). In that case, the Board

concluded that the calls must terminate to the "end user's premises" and that the conference call providers in that case did not qualify as end users under Iowa law, which continues to require LECs to maintain and abide by a local exchange tariff. *Id.* at *1.

The Board observed that "*when an end user customer obtains local exchange service, that service includes subscription to the access tariffs*. This is because the access tariffs include charges that are billed on the local exchange invoice, including an end user common line (EUCL) charge and a federal USF charge. Therefore, when a customer pays a LEC's invoice, the customer proves that it has obtained local exchange service and that it has subscribed for access service. As long as that customer is not a carrier, that customer would be considered an end user under the access tariff." *Id.* at *10 (emphasis added). The Board found that the LECs in that case "did not comply with the billing requirements *of their tariffs* when they did not send the FCSCs monthly local exchange invoices." *Id.* at *10 (emphasis added). The Board also relied on evidence that certain carriers "amended agreements and backdated bills" and determined that this demonstrated that those LECs "knew they had not served the FCSCs *as required by their tariffs*. . ." *Id.* at *11 (emphasis added). Thus, the Board concluded that the conference call providers "did not subscribe to the [LEC's] access or local service tariffs . . .." *Id.* at *15.

A subsequent decision from the FCC followed closely, both in time and substance, the decision of the Iowa Utilities Board. In *Qwest Communications Corp. v. Farmers and Merchants Mutual Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd. 14801 (2009), the FCC determined that the conference call providers in that case did not constitute "end users" under the terms of Farmers and Merchants tariff, one of the same LECs involved in the IUB's order. To make this decision, the FCC articulated a number of considerations, including:

- "The tariff's definition of the term 'customer' is critical to our analysis because a person or entity is not an 'end user' unless the person or entity is also a 'customer.' The tariff

requires that to be a customer, the person or entity must subscribe to the services offered under the tariff." *Id.* ¶ 10.

- The Commission stated that its prior determination that the conference call providers qualified as "end users" was based on a representation that they paid "the federal subscriber line charge." *Id.* ¶ 11. New evidence, however, showed that "the conference calling companies and Farmers structured their business arrangements pursuant to contracts and not the terms and conditions set forth in the tariff." *Id.*

- The Commission observed that "Farmers agreed to provide a host of services to support the conference calling companies' business venture, and significantly, to pay the conference calling companies a per-minute fee for the traffic generated through their mutual relationship." *Id.* ¶ 12.

- "When it began conducting business with the conference calling companies, Farmers did not enter their account information into its customer billing systems in accordance with its standard business practices for tariffed services. Thus, contrary to Farmers' representation in the underlying proceeding, its regular business records did not indicate that the companies were purchasing the End User Access Service offered in Farmer's tariff." *Id.* ¶ 16.

- Farmers "issued backdated bills" to the conference call companies. *Id.* ¶ 17.

Importantly, these Iowa orders rest on the notion that the conference call providers did not subscribe to the tariffs at issue in those cases. The analysis in both the IUB and the FCC's orders therefore is contingent upon there being a requirement for local exchange customers to receive service pursuant to *tariffs*, as required by Iowa law, Iowa Code Ann. §§ 476.4, and the corresponding requirement that LECs must then adhere strictly to the requirements of those tariffs in billing its customers for service, Iowa Code Ann. §§ 476.5.

It is precisely because *South Dakota is critically different from Iowa law* on these very points that those decisions are not persuasive and that summary judgment is appropriate here. Northern Valley has no obligation to maintain a local exchange tariff or to bill its customers in any particular manner. Rather, because Northern Valley is a small carrier, SDCL 49-31-5.1 exempts Northern Valley from a host of regulatory obligations, including, "Requirements for telecommunications companies to maintain and make available to the public and the commission

records and utility tariffs;" "(3) Requirements that telecommunications companies must follow regarding procedures for billing customers;" and "(4) Requirements for fling and noticing tariff changes," SDCL 49-31-5, as well as requirements to keep a tariff available for public inspection, SDCL 49-31-12.2. Further, because of SDCL 49-31-5.1, Northern Valley is not subject to a prohibition against deviating from its published rates or required to file copies of any contracts, agreements or arrangements. SDCL 49-31-12.2.

Indeed, local exchange service in the Qwest territories where Northern Valley operates is fully competitive and thus completely deregulated. *See In the Matter of the Application of Qwest Corporation to Reclassify Local Exchange Services as Fully Competitive*, Order Reclassifying Qwest's Local Exchange Service as Fully Competitive; Order Approving Settlement Agreement; Notice of Entry (TC 03-057). As a result of this finding of full competitiveness, many of the requirements that the IUB found to be central to its analysis, would not apply even if Northern Valley was not exempted pursuant to SDCL 49-31-5.1. For example, Northern Valley's local exchange services would not be subject to commission pricing regulation, SDCL 49-31-12, Northern Valley would not be required to file, SDCL 49-31-12.7, or strictly adhere to a local exchange tariff, SDCL 49-31-12.2, and there would be no prohibition against it deviating from its published rates, *id.* In fact, because of the level of deregulation of local services in South Dakota, neither Northern Valley *nor this Commission* maintains a general exchange catalog for Northern Valley. (SOF 11)

Further, the South Dakota legislature as declared that it shall be the policy of the state of South Dakota that "Local exchange telecommunication companies must be allowed to compete to keep their profitable customers in order to maintain the viability of local exchanges," and that they are therefore permitted to "grant any discounts, incentives, services, or other business

practices necessary to meet competition." SDCL 49-31-84. Northern Valley's decision to enter into individual case basis contracts (SOF 44, 45, 65, 98, 121, 149, 169); to pay the conference call providers a monthly marketing fee (SOF 59, 87, 112, 134, 145, 165); to provide co-location space in the central office (SOF 66, 99, 122, 137, 150, 170); to engage in netting rather than sending a separate invoice for fees (SOF 70, 103, 154, 174); and not to require the conference call providers to needlessly write a ceremonial check (SOF 71, 104, 155, 175); only to have those funds returned through the payment of the marketing fees, all were done with the intent of competing for profitable customers (SOF 43) – a right protected by the force of law. Northern Valley's conduct, and the manner in which it structured its relationship with the Conference Call Providers, does nothing to the change the nature of the service that Sprint has received and it certainly did nothing to alter Sprint's ability to charge its customers the applicable long-distance rates for those calls.

This Commission should also take into consideration the fact that Sprint and other IXCs have twice asked the South Dakota legislature to reverse this policy and enact legislation to prevent LECs from continuing to serve Conference Calling Providers and collect access charges on that traffic. (SOF 191) While the legislation they considered would not be dispositive of the issue of whether the previously-billed amounts are due, the outcome of those failed lobbying efforts underscores the legislature's continued understanding of the important role large end users can play for LECs in South Dakota. In other words, the legislature has twice rebuked the position that Sprint maintains in these cases. (SOF 192 & 193)

First, in 2010, HB 1097 would have imposed a civil penalty on anyone who assessed an "access stimulation charge." (SOF 192) The bill failed in the House of Representatives with a vote of 31 in favor to 37 opposed. (SOF 192) The next year, Senate Bill 87 reflected a modified

version of HB 1097. (SOF 193) It too would have imposed civil penalties on local exchange carriers that assessed an "access stimulation charge." (SOF 193) The billed failed to be passed out of the Commerce and Energy Committee. When the bill sponsor nevertheless utilized the procedural rules to bring the bill to the floor of the Senate, it failed for a third time with a vote of 13 in favor to 21 opposed. (SOF 193) Having been advised of Sprint's position and having refused to take legislative action to prevent Northern Valley from receiving intrastate access charges on these calls, it must be concluded that the legislature understands that the practice comports with South Dakota law.

Accordingly, the Commission must reject any suggestion that the decision of the Iowa Utilities Board, and the FCC decision that mirrored it, should control the outcome in this case. The legal regimes governing the provision of local exchange service in Iowa and South Dakota are fundamentally different. South Dakota compels this Commission to protect the right to competition enacted by the South Dakota legislature and to refuse Sprint's efforts to intrude into the unregulated relationship between Northern Valley and its customers.

CONCLUSION

Sprint has refused for many years to pay Northern Valley for switched access services for undisputed traffic. Such conduct is in violation of the intent of Northern Valley's tariff. Summary judgment should be granted and the Commission should declare that Sprint's actions are unlawful.

Further, the Commission should grant summary judgment and declare that Northern Valley's access tariff is fully applicable to the traffic delivered to the Conference Call Companies included in this motion. Those services fit squarely within the statutory and tariff definitions at issue in this case. Moreover, the matters about which Sprint complains, and the decisions upon

which it undoubtedly will rely, involve the provision of local exchange service, not the switched access service Sprint receives. Local exchange services are fully deregulated in South Dakota, thus making the Iowa decisions inapposite. Moreover, this state has a long-held, and solid policy of promoting competition among local exchange carriers. That competition protects Northern Valley's right to provide incentives and discounts to attract high volume, profitable customers; this is precisely what Northern Valley has done here. Thus, this Commission should squarely reject Sprint's invitation to do what the legislature has declined to do and refuse to put government in the middle of policing Northern Valley's relationships with its customers.

Accordingly, the Commission should grant summary judgment and declare Sprint liable for tariffed access charges as follows:

1) **Undisputed Traditional Traffic:** Sprint should be ordered to pay Northern Valley for traffic originating or terminating to traditional residential and business customers, which Sprint does not dispute is due and owing to Northern Valley. (SOF 196 (traditional amounts due total **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**)). Sprint should also be required to pay the interest accrued on this amount. SOF 197 (late fees total **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**).

2) **Global Conference Partners:** Intrastate access charges for traffic terminating to Global Conference Partners ("GCP") for the period from November 2007 to present, and applicable interest.[8]

3) **One Rate:** Intrastate access charges for traffic terminating to One Rate Conferencing, LLC ("One Rate") for the period April 2007 to present, and applicable interest.

4) **CLEC Connect:** Intrastate access charges for traffic terminating to CLEC Connect, LLC ("CLEC Connect") for the period September 2007 to May 2011, and applicable interest.

[8] As a reminder, Northern Valley is not seeking summary judgment on traffic to Global Conference Partners for the period of November 2005 to November 2007 because, during that time period, GCP's conference bridge was co-located in the central office of James Valley Telephone Cooperative in Groton, South Dakota. Northern Valley is also not seeking summary judgment on traffic terminated to National Communications Group or VAPPS, Inc., whose conference bridges were located in Groton. The exclusion of this traffic from the Motion for Summary Judgment is without prejudice to Northern Valley's ability nevertheless to seek compensation for the service provided in terminating this traffic.

5) **Call All:** Intrastate access charges for traffic terminating to CallAll, LLC ("CallAll") for the period December 2007 to February 2008, and applicable interest.

6) **Free Conferencing:** Intrastate access charges for traffic terminating to Free Conferencing Corporation ("Free Conferencing") for the period May 2009 to present, and applicable interest.

7) **Sang:** Intrastate access charges for traffic terminating to Sang Capital Group, LLC for the period August 2009 to present, and applicable interest. (SOF 198 (intrastate conferencing traffic combined totals **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**); SOF 199 (late fees for intrastate conferencing totals **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 11th day of July 2012 upon the following:

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