

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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

DOCKET NUMBER TC 09-098

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

**NORTHERN VALLEY
COMMUNICATIONS, LLC'S
RESPONSE TO SPRINT'S
STATEMENT OF UNDISPUTED FACTS
IN CONJUNCTION WITH ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

* * * PUBLIC VERSION * * *

Sprint Communications Company L.P. (“Sprint”), by and through its undersigned attorneys, respectfully submits its Statement of Undisputed Material Facts in Conjunction with its Motion for Partial Summary Judgment:

1. Northern Valley Communications, L.L.C. (“Northern Valley”) is a competitive local exchange carrier (“CLEC”).

RESPONSE: Undisputed.

2. Northern Valley’s Counterclaim Count II, pled in the alternative, asks the Commission to set a “reasonable rate” under SDCL § 49-13-13 for intrastate calls destined to numbers assigned to its call connection company (“CCC”) partners, in the event its intrastate access tariff does not apply.

RESPONSE: Disputed. Northern Valley disputes that the so-called “call connection companies” are Northern Valley’s “partners.” *See* Affidavit of James Groft, ¶¶ 4 - 6. No evidence has been presented by Sprint to support this assertion.

Northern Valley does not dispute that its Count II is pled in the alternative and would be applicable only insofar as the Commission determines that its intrastate access tariff does not

cover the traffic at issue.

3. The calls that are the subject of the dispute (and thus Counterclaim Count II) are delivered by Sprint to South Dakota Network, LLC (“SDN”), which delivers the calls to Northern Valley in Groton.

RESPONSE: Undisputed.

4. Sprint is obligated by law to deliver the calls at issue, as the Federal Communications Commission (“FCC”) has prohibited carriers from engaging in call blocking as part of traffic pumping disputes. In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers, 22 FCC Rcd. 11629, 2007 WL 1880323, ¶ 1 (2007).

RESPONSE: Northern Valley disputes this statement insofar as the traffic at issue in this case is *intrastate* in nature and thus subject to the jurisdiction of the South Dakota Public Utilities Commission, rather than the Federal Communications Commission. Accordingly, it is a question of *law* not *fact* as to what extent the FCC’s decision cited by Sprint would be applicable to the traffic in this case.

5. When the calls hit Northern Valley’s network, they are delivered to CCCs through facilities owned or leased by Northern Valley.

RESPONSE: Undisputed.

6. The calls are delivered in this way because they are destined to unique telephone numbers that Northern Valley has obtained and assigned to these CCCs.

RESPONSE: Undisputed. Northern Valley observes, however, that all calls on its network (not just those destined to conference calling providers) are delivered in this manner.

7. The “service” of delivering calls to CCCs who are assigned a unique telephone number is therefore a noncompetitive service. No other telecommunications provider delivers calls to those CCCs assigned those numbers.

RESPONSE: Disputed. Northern Valley does not dispute that no other telecommunications provider delivers calls for ultimate termination to the telephone numbers assigned to the conference call providers’ connected to Northern Valley’s network. Whether this

fact, and this fact alone, renders the service “noncompetitive,” however, is a legal conclusion, which the Public Utilities Commission may make if, and only if, it first determines “after a hearing” that Northern Valley’s intrastate access tariff does not apply to the traffic. *See* SDCL § 49-13-13 (“If, after a hearing pursuant to this chapter, it appears to the satisfaction of the commission that anything has been done or omitted to be done in violation of the provisions of laws of this state, or that any individual or joint rate or charge demanded, charged, collected, or received by any telecommunications company or motor carrier subject to the provisions of this title, or that any individual or joint classifications, regulations, or practices of a telecommunications company or motor carrier are unjust, unreasonable, unjustly discriminatory, unduly preferential, prejudicial, or otherwise in violation of the laws of this state, or that any injury or damage has been sustained by any person, the commission may determine and prescribe the just and reasonable charge, to be observed as the maximum to be charged. The commission shall also determine what classification, regulation, or practice is just, fair, and reasonable to be thereafter followed, and to make an order that such telecommunications company or motor carrier shall cease and desist from the violations to the extent that the commission finds them to exist.”)

8. For the year 2010, Northern Valley’s switching costs have been approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] This is calculated as follows:

a. Northern Valley pays its parent company James Valley \$15,000 per month to lease capacity on the Metaswitch softswitch that is used for calls to Call Connection Companies (“CCCs”).

b. In September 2011 Mr. Groft testified that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END]

CONFIDENTIAL]

RESPONSE: Sprint's *approximation* of Northern Valley's switching cost is not a material fact at issue in the motion for partial summary judgment. Rather, Sprint has asked only for the Commission to determine that "as a matter of law, if the Commission sets a rate in accordance with Northern Valley's Counterclaim II, it will do so by employment rate of return regulation." Because Sprint's approximation of Northern Valley's switching cost is not *relevant* to this legal issue, Northern Valley is not obligated to respond and this material should be stricken. *See* SDCL 15-6-56(c)(1) ("A party moving for summary judgment shall attach to the motion a separate, short, and concise statement of **the material facts** as to which the moving party contends there is no genuine issue to be tried.").

To the extent that the Commission disagrees, Northern Valley disputes Sprint's calculations on the grounds that Sprint has not presented this as a fact, but rather as an approximation. Northern Valley also notes that its costs associated with delivering Sprint's traffic is far more than the \$15,000 for *switching* that Sprint's calculation is based on. *See* Groft Decl., ¶ 8. Further, pursuant to SDCL 15-6-56(f), Northern Valley is continuing to determine which expert witness(es) it may retain to evaluate what rate would be reasonable pursuant to Count II. As such, and because Northern Valley is not a rate of return carrier, it has undertaken no analysis regarding its costs associated with delivering Sprint's traffic to the conference call providers. *See* Groft Decl., ¶ 7. Accordingly, Northern Valley requests additional time to complete discovery and expert analysis.

9. The Commission can take judicial notice of the fact that Northern Valley has not filed a petition pursuant to SDCL § 49-31-4.1 to have the rate for this “service” set using price regulation. See SDCL § 19-10-3.

RESPONSE: Northern Valley does not dispute that it has not personally filed a petition pursuant to SDCL § 49-31-4.1 to have a rate set for the access services that it has provided and continues to provide to Sprint. Rather, the rates for all CLEC intrastate access services in South Dakota are set using price regulation. *See In the Matter of the Investigation of Pricing Regulation for Switched Access Services Provided by Competitive Local Exchange Carriers, Order Finding Pricing Regulation Appropriate for CLECs’ Switched Access Services; Order Denying in Part and Granting in Part Qwest’s Motion; Order Taking Judicial Notice; and Order Closing Docket TC 10-014 (SDPUC May 4, 2010).* Pursuant to ARSD 20:10:27:02.01, Northern Valley Communications, LLC bills \$0.06042 per switched access minute of use for both Originating and Terminating switched access minutes. This rate mirrors the intrastate switched access rate of the Regional Bell Operating Company operating in South Dakota.

10. Northern Valley has served responses to Sprint’s 2012 discovery requests in which it denied Sprint’s RFA 17, which asked Northern Valley to admit that the service for which it sought compensation is unrelated in accordance with SDCL § 49-31-5.1.

RESPONSE: Disputed. Northern Valley cannot respond to this request as stated, as it does not understand what Sprint contends that the service is related or “unrelated” to.

In any event, Northern Valley’s response to RFA 17 speaks for itself. Northern Valley observes first that by denying the request to admit that the service is “unregulated” it did not admit that the service was, in fact, regulated. Rather, it stated that it is not possible to determine whether the service is regulated or unregulated at this time because SDCL § 49-13-13 charges the Commission with determining how to classify the service, if it first determines that the service is not subject to Northern Valley’s intrastate tariff, which it has not done.

Dated: March 28, 2012

Respectfully submitted:

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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 28th day of March 2012 upon the following:

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