

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

DOCKET NUMBER TC 09-098

**AFFIDAVIT OF
REGINA ROACH**

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

REGINA ROACH, being duly sworn under oath, states and alleges as follows:

1. I am employed as Manager, Access Verification, for Sprint Communications Company L.P. (“Sprint”). I have personal knowledge of the matters contained in this Affidavit, or have obtained the information from records of which I have custody.

2. I make this affidavit in opposition to Northern Valley’s Motion for Summary Judgment, and in Support of Sprint’s Motion for Summary Judgment.

3. Sprint became aware of traffic pumping in late 2006 when I received a call from an employee in Sprint’s Fraud Department. The employee was investigating suspicious traffic for a carrier in Iowa and asked me if Sprint was being billed an unusually-high amount in switched access charges by that carrier. Sprint’s Access Verification team began investigating these operations and confirmed that the Iowa carrier was operating “free international calling” and “free chat line” schemes.

4. Over the next several years, we came to find many other similar traffic pumping schemes, operating mainly in Iowa and South Dakota. In our experience, these schemes generally involve a LEC with high access rates, partnering with call connection companies (“CCCs”) that market services like free or nearly free conference calling, international calling, chat lines, and voicemail. The partner companies are assigned telephone numbers from the LEC’s exchange and place the bridging equipment in the LEC’s end office switch facility. The partner companies then advertise their services on the Internet, generating enormous volumes of calls to the assigned telephone numbers. With bulk or unlimited long distance calling now a common feature of many consumers’ landline and cellular phone service plans, end users can call a non-local number to reach the service at no incremental cost. The rural LEC bills access charges to the IXCs that have carried the long distance calls and then shares collected revenues with the CCCs through marketing fees or other thinly disguised revenue-sharing arrangements.

5. It has become clear over time that, from a business standpoint, pumpers are not concerned about providing tariffed switched access services in compliance with their tariffs. Instead, the scheme works for the pumpers so long as they bill high access rates and then negotiate a lower payment amount with IXCs who wish to avoid costly litigation that is necessary to uncover the facts surrounding these business practices. The lower payment is then offered only to IXCs who agree to pay for pumped traffic, and the CCCs agree to reduce their share of the profits accordingly. Pumpers then use aggressive litigation tactics with IXCs that do dispute, hoping to prompt settlement. Again, to extent the settlement amounts represent a reduction from the tariff amounts, that loss is shared between the LEC and its CCCs.

6. Traffic pumping schemes are concentrated in rural areas because small rural LECs historically have been allowed to charge high access rates to recover the costs associated

with serving sparsely populated, low volume markets. The high access rates allowed by regulators were intended to subsidize the end users. Without the subsidy, an end user in a small rural community might have to pay a prohibitively-high monthly cost for local phone service compared to an end user in a large metropolitan area where the LEC can gain economies of scale.

7. We made a decision internally that when we identified a carrier with operations that evidenced traffic pumping – e.g., provision of free or nearly-free services by the entities using the numbers, a spike in volumes, a disproportionate amount of terminating traffic – Sprint would dispute charges for the traffic and seek to obtain additional information to determine whether the calls at issue fit the regulatory and tariff requirements for the application of access charges. If further information provided by the LEC validated the charges, Sprint would pay the billed amounts. If such information was not forthcoming, Sprint would stand on its dispute.

A. SPRINT’S DISCOVERY OF NORTHERN VALLEY’S TRAFFIC PUMPING SCHEME

8. In September 2007, Sprint’s Access Verification department determined that Northern Valley’s monthly billing to Sprint’s IXC operations had increased dramatically, from an average of \$17,000 per month during 2004 to [CONFIDENTIAL BEGINS] [REDACTED] [CONFIDENTIAL ENDS] My team analyzed the traffic on which Northern Valley was assessing switched access charges and identified that the vast majority of the calls were to conference line numbers, and calls were disproportionately in the terminating direction.

9. We filed our initial dispute in September of 2007. At that time Sprint disputed [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [END CONFIDENTIAL] for the disputed charges on the October 2007 invoice. Sprint increased its refund claim in March 2009 when it filed a retroactive claim for the March 2007-August 2007 time period. During subsequent months, Sprint disputed and withheld payment for charges on pumped traffic, and held payments for non-pumped traffic to reduce its refund demand.

10. Sprint applied its account payable debit balance mechanism as it had done with SDN. After reducing the bill amount by the amount of the unlawful charges, Sprint has approved compensation for the charges for non-pumped traffic each month. The approved amounts are applied to reduce the account payable debit balance created by Sprint's refund claim for prior amounts unlawfully billed by Northern Valley. Instead of sending a check to Northern Valley for the charges associated with non-pumped traffic, Sprint has held those amounts and reduced on its books the payable that was generated when it filed its refund claim.

11. In December of 2010, the account payable debit balance had been reduced to \$0, and Sprint began making payments to Northern Valley each month for charges associated with non-pumped traffic.

12. In addition, in December 2010 and March 2011 Sprint made payments to Northern Valley totaling [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] that compensated Northern Valley for a significant portion of the traditional traffic billed during those time periods prior to December 2010.

13. At present, the amount Sprint has withheld for non-pumped intrastate traffic is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Attached as Exhibit A are calculations of this amount.

14. I have reviewed Northern Valley's Statement of Fact 187 and the supporting documentation (including Ms. Berndt's affidavit). I dispute Northern Valley's statement that there are outstanding amounts for traditional intrastate traffic of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** Northern Valley does not explain how calculations were made, and I cannot determine that by examining the information that was provided.

15. It appears to me that Northern Valley's analysis misapplies Sprint's payments by reducing balances on traditional interstate traffic and increasing the amount due for traditional intrastate traffic. It was Sprint's intent and practice to reduce its interstate refund claim by the amount of approved interstate charges.

16. I have reviewed Northern Valley's Statements of Fact 197 and 199, which relate to late charge calculations. Northern Valley has neither provided the underlying calculations nor explained the methodology it used. I have examined the numbers and am unable to determine how the numbers were generated. In addition, Northern Valley's Exhibit 74 indicates that it used two separate interest rates based on "old tariff rates" and "new tariff rates," but does not identify the rates it used or its reason for believing the tariff rate changed. My review of tariffs indicates that the Local Exchange Carrier Association, Inc. ("LECA") Tariff No. 1 provision relating to late payment charges, in which Northern Valley concurs, has not changed since 1991. *See* LECA Tariff § 2.4.1(C)(2).

17. I have reviewed Northern Valley's Statement of Fact 23, and the underlying documentation provided by Northern Valley. Northern Valley's August 1, 2012 invoice billed intrastate minutes at a rate of \$0.06042 (not the rate set identified by Northern Valley). In addition, the composite tariff rate identified appears to inappropriately include a tandem switching element.

Affiant says nothing further.

s/Regina Roach
Regina Roach

Subscribed and sworn to before me
this 29th day of August, 2012.

s/Shelly Green
Notary Public
My Commission expires: 1/5/2016

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