

**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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**SPRINT’S RESPONSE TO  
NORTHERN VALLEY’S  
STATEMENT OF FACTS, AND  
SPRINT’S AFFIRMATIVE  
STATEMENT OF ADDITIONAL  
FACTS**

Sprint Communications Company L.P. (“Sprint”), by and through its undersigned counsel, respectfully submits its Response to Northern Valley Communications LLC’s (“Northern Valley”) Statement of Undisputed Facts (“SOF”) in support of its Motion for Partial Summary Judgment, and its Exhibits 101-140. Beginning at page 63, Sprint has identified additional facts on which it relies to oppose Northern Valley’s motion and in support of its cross motion for summary judgment.

**ABOUT NORTHERN VALLEY**

**1. Northern Valley was established in March of 1997 and began by providing dial-up Internet access to residents of northeast South Dakota. See Declaration of James Groft (“Groft Decl.”), ¶ 2.**

RESPONSE: Undisputed.

**2. The 1996 Telecommunications Act cleared the way for Northern Valley to provide competitive telecommunications services. On March 18, 1998, the South Dakota Public Utilities Commission (“SDPUC” or the “Commission”), in accordance with SDCL § 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from Northern Valley. See *In the Matter of the Application of Northern Valley Communications, LLC for a Certificate of Authority to Provide Telecommunications Services, Including Local***

*Exchange Services, in South Dakota, Amended Order Granting Certificate of Authority, TC98-063 (attached as Exhibit 1 hereto).*

RESPONSE: Undisputed.

3. On June 5, 1998, the Commission approved Northern Valley's application for a certificate of authority. *Id.* The Commission authorized Northern Valley to provide its services in those areas in South Dakota where U.S. West Communications, Inc. was the incumbent local exchange carrier. *Id.*; *see also* Northern Valley's Response to Sprint's Interrogatory No. 2 (attached as Exhibit 75 hereto).

RESPONSE: Undisputed.

4. Northern Valley is a Competitive Local Exchange Carrier ("CLEC"). *See* Northern Valley's Answer to Sprint's Third-party Complaint, p. 8, ¶ 5; Groft Decl., ¶ 3.

RESPONSE: Undisputed.

5. 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. Groft Decl., ¶ 4.

RESPONSE: Undisputed.

6. In May of 2001, NVC 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. Groft Decl., ¶ 5.

RESPONSE: Undisputed.

7. In 2007, Northern Valley began providing residential and business telephone service in Redfield, South Dakota. *See* Deposition of James Groft Volume I. ("Groft Vol. I Dep. Tr.") pp. 30:18-22 (Sept. 26, 2011) (attached hereto as Exhibit 2).

RESPONSE: Undisputed.

8. Northern Valley currently has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] local exchange subscribers. Groft Decl., ¶ 6. At no time has Northern Valley had more than fifty thousand local exchange subscribers. *Id.*

RESPONSE: Sprint does not dispute this statement and notes that this number does not include CCCs. Sprint's Ex. 102, NV's Supp. Response to IR 11 (Northern Valley has approximately [BEGIN CONFIDENTIAL] [REDACTED] [END

**CONFIDENTIAL]** lines if CCCs are included). Thus, it is undisputed that CCCs are not local exchange subscribers.

**9. 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 *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) (attached as Exhibit 3 hereto).**

RESPONSE: Sprint does not dispute that the Commission issued the Order attached as Northern Valley’s Exhibit 3, and that Northern Valley’s rates for non-access services are not regulated. Sprint does dispute Northern Valley’s suggestion that this Order relieves Northern Valley from the obligation to provide service consistent with otherwise applicable law. Nor does this Order render legitimate the sham arrangements Northern Valley entered into with CCCs.

**10. Northern Valley does not maintain a local exchange tariff. See Deposition of James Groft Volume II. (“Groft Vol. II Dep. Tr.”) pp. 14:3 – 5 (Sept. 27, 2011) (attached as Exhibit 4 hereto). Rather, Northern Valley previously had a general exchange catalog. Groft Decl., ¶ 7; See Northern Valley Communications, LLC, General Exchange Catalog attached as Exhibit 5 hereto.**

RESPONSE: Undisputed.

**11. That general exchange catalog, however, is no longer maintained in the Commission’s records. Groft Decl., ¶ 7.**

RESPONSE: Undisputed.

#### **NORTHERN VALLEY’S INTRASTATE ACCESS TARIFF AND ACCESS RATES**

**12. On September 13, 1999, Northern Valley filed for a three year exemption from filing cost-based switched access rates and for approval of its intrastate switched access Tariff No. 1. See *In the Matter of the Filing by Northern Valley Communications, LLC for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates*, Order Granting Petition for Extension and Approval of Tariff; Ordering Granting Joint Motion for Approval of Settlement Stipulation; and Order Approving Settlement Stipulation, TC05-197 (June 5, 2006) (the “2006 Stipulation Order”) (attached as Exhibit 6 hereto). That request was granted on October 20, 1999. *Id.***

RESPONSE: Undisputed.

13. 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. *Id.*

RESPONSE: Undisputed.

14. On December 1, 2005, Northern Valley again filed for an extension of its exemption from filing cost-based switched access rates. *Id.*

RESPONSE: Undisputed.

15. On February 24, 2006, Commission staff filed a memo making recommendations to the Commission about Northern Valley's December 1, 2005 petition. *See* Memorandum to the Commissioners from Keith Senger, TC05-197 (Feb. 24, 2006) (attached as Exhibit 7 hereto). 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. *Id.* at 2. 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." *Id.* 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. *Id.* at 6.

RESPONSE: Undisputed.

16. On May 19, 2006, the Commission received a Joint Motion for Approval of Settlement Stipulation (attached as Exhibit 8 hereto), a Settlement Stipulation between Northern Valley and Commission staff (attached as Exhibit 9 hereto), and a memorandum from staff encouraging that the stipulation be approved (attached as Exhibit 10 hereto). 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. *See* Exhibit 6, 2006 Stipulation Order.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed, except that "\$0.11150" should be "\$0.1150."

18. 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. *See In the Matter of the Filing by Northern Valley Communications, LLC for an Extension of an Exemption from Developing Company Specific Cost-based Switched Access Rates*, Order Dismissing and Closing the Docket, TC09-031 (August 9, 2011) (attached as Exhibit 11 hereto). Midcontinent Communications, Qwest Communications Company, LLC and AT&T Communications of the Midwest, Inc. were granted leave to intervene in the docket. *Id.*

RESPONSE: Undisputed.

19. On June 4, 2009, Northern Valley filed a Motion for Temporary Approval of Switched Access Rates, which was unanimously granted on June 23, 2009. *Id.* Pursuant to that motion, Northern Valley's intrastate access rate remained in effect. *Id.*; *see also In the Matter of the Filing by Northern Valley Communications, LLC for an Extension of an Exemption from Developing Company Specific Cost-based Switched Access Rates*, Order Granting Intervention; Order Granting Request for Temporary Approval of Switched Access Rates, TC09-031 (June 30, 2009) (attached as Exhibit 12 hereto).

RESPONSE: Undisputed.

20. 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. *See Exhibit 11.*

RESPONSE: Undisputed.

21. The Commission adopted new rules for CLEC intrastate access rates that became effective on May 30, 2011. *Id.* 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."

RESPONSE: Undisputed.

22. 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. *In the Matter of the Filing by Northern Valley Communications, LLC for Approval of its Intrastate Switched Access Tariff*, Order Approving Tariff Revisions, TC11-076 (Aug. 1, 2011) (attached as Exhibit 13 hereto). These tariff revisions reduced Northern Valley's intrastate access rate to \$0.06042.

RESPONSE: Undisputed.

23. On June 11, 2012, Northern Valley filed revised intrastate switched access rates. 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.** *See Letter from J. Groft to P. Van Gerpen and attachments thereto (June 11, 2012), attached as Exhibit 14 hereto (confidential information omitted).*

RESPONSE: Sprint disputes that this fact is material because it would only impact traffic billed after August 1, 2011, which traffic is not a part of this case. *See Sprint’s SOF 201.* In addition, Sprint disputes this statement because Northern Valley’s August 1, 2012 invoice billed intrastate minutes at a rate of \$0.06042, and because the composite tariff rate identified above appears to inappropriately include a tandem switching element. *See August 29, 2012 Affidavit of Regina Roach (“Roach Aff.”) ¶ 17.*

**24.** 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. *See Northern Valley Intrastate Access Tariff (attached as Exhibit 15 hereto).*

RESPONSE: Undisputed.

**25.** At all times relevant to this dispute, the LECA tariff has provided that the term “Access Minutes,” *inter alia*, “denotes customer usage of exchange facilities in the provision of intrastate service.” *See LECA Tariff No. 1 (attached as Exhibit 16 hereto) at 2<sup>nd</sup> Revised Page 2-43.* The tariff also provides that “On the terminating end of an intrastate call, usage is measured from the time the call is received by the end user in the terminating exchange.” *Id.*

RESPONSE: Undisputed.

**26.** 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) . . .” *Id.*, First Revised Page 2-47.

RESPONSE: The original tariff language, as provided in Northern Valley’s Exhibit 16, does not include the language “but not limited to” and, thus, defines a “customer” to mean “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).” The language cited by Northern Valley is accurate for First

Revised Page 2-47, which is not provided in Northern Valley's exhibits. First Revised Page 2-47 went into effect on December 29, 2011.

**27. At all times relevant to this dispute, 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." *Id.*, Original Page 2-50.**

RESPONSE: Undisputed.

**28. The term "Individual Case Basis" is defined in the LECA Tariff 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." *Id.*, Original Page 2-53.**

RESPONSE: Undisputed.

**29. The term "Premises" denotes "a building or buildings on continuous property (except Railroad Right-of-Way, etc.) not separated by a public highway." *Id.*, Original Page 2-57.**

RESPONSE: Undisputed.

**30. "Switched Access" is 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).**

RESPONSE: Undisputed.

**31. 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.

Exhibit 16, Original page 6-1.

RESPONSE: Undisputed.

32. 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 the appropriate codes) when such services can be reached by using valid NXX codes. . . .” *Id.*, 2<sup>nd</sup> Revised Page 6-82.

RESPONSE: Undisputed.

### NORTHERN VALLEY’S NETWORK

33. South Dakota Network provides centralized equal access in the state of South Dakota, including for long-distance calls that originate and terminate on Northern Valley’s network. *See* Amended Affidavit of M. Shalanta, ¶ 2, ¶ 7 (filed in support of SDN’s Motion for Partial Summary Judgment) (Sept. 23, 2011).

RESPONSE: Sprint disputes that SDN provides centralized equal access services with respect to calls delivered to Northern Valley’s CCC partners. SDN’s tariff applies to calls delivered to a “Participating Telecommunications Carrier” (a type of “Exchange Telephone Company”) and destined to an end user’s premises. As described below, Sprint disputes that Northern Valley qualifies as a “Participating Telecommunications Carrier,” or an “Exchange Telephone Company,” that CCCs qualify as end users, and that CCCs maintain premises.

It is undisputed that SDN trunks have carried most calls from Sprint (and other carriers) to a Northern Valley switch, then to Northern Valley’s CCC partners. [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED] [END CONFIDENTIAL]

34. To provide access services to long-distance carriers, including Sprint, and to connect its local customers to those long-distance carriers, [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Exhibit 2, Groft Vol. I Dep. Tr. pp. 31:12-18. The capacity Northern Valley leases is separate from the capacity that its parent company James Valley leases. *Id.* at 32:4 – 9; 48:3 – 20. [BEGIN CONFIDENTIAL]

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[REDACTED]

[REDACTED]. [BEGIN CONFIDENTIAL] [REDACTED]

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[REDACTED] [END CONFIDENTIAL]

**42. 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”). Groat Decl., ¶ 8.**

RESPONSE: Disputed that CCCs are “customers.” *See* Sprint’s Response to NV’s SOF 43, and Sprint’s SOF 241-245.

43. 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. *Id.*, ¶ 9.

RESPONSE: Sprint disputes that these are “profitable customers” of Northern Valley’s services. Northern Valley has never attempted to profit from providing services to CCCs. Instead, it has served CCCs in order to profit from charges billed to interexchange carriers. This makes the Northern Valley-CCC relationship fundamentally different from a traditional end user relationship. This is shown by the following:

**[BEGIN CONFIDENTIAL]**

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[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

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<sup>4</sup> [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]





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[REDACTED] [END CONFIDENTIAL]

**44. 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. *Id.*, ¶ 10.**

RESPONSE: Disputed. The evidence shows that services were not provided “pursuant to” contracts with CCCs. To the contrary, the contracts were designed to create the appearance of a legitimate end user relationship, not to establish terms. As noted in Sprint’s Response to Northern Valley’s SOF 43, Sprint disputes Northern Valley’s statement that CCCs are profitable customers.

**45. 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. *Id.*, ¶ 11.**

RESPONSE: Undisputed.

**46. [BEGIN CONFIDENTIAL]** [REDACTED] [END CONFIDENTIAL]

RESPONSE: Sprint disputes this statement. The traffic within the scope of this motion is from November 2007 forward. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

47. [BEGIN CONFIDENTIAL]

[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

RESPONSE: Disputed. [BEGIN CONFIDENTIAL]

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[REDACTED] [END CONFIDENTIAL]

<sup>6</sup> Sprint's Ex. 124, NVC00075997.

<sup>7</sup> Sprint's Ex. 125, NVC00071461.

**A. GLOBAL CONFERENCE PARTNERS**

**48. Global Conference Partners, Inc. (“Global Conference”) is a Conference Call Provider. Groft Decl., ¶ 14; see also Deposition of Dennis Pascual, 23:2-10 (Oct. 11, 2011) (“Pascual Dep. Tr.”) (attached as Exhibit 18 hereto ) [BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]**

RESPONSE: Undisputed.

**49. In or about November 2005, Northern Valley and Global Conference entered into a Service Agreement. See Exhibit 18, Pascual Dep. Tr. pp. 22:8-10; Pascual Dep. Exhibit 6 (attached as Exhibit 19 hereto); Exhibit 75, Northern Valley’s Response to Sprint’s Interrogatory No. 28.**

RESPONSE: Undisputed.

**50. The November 10, 2005 Service Agreement provided that Northern Valley [BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL] Exhibit 19, ¶ 1.**

RESPONSE: Sprint does not dispute that the referenced agreement reads as quoted, with the addition of the phrase shown above in redline format, which was left out.

**51. The agreement provided that Global Conference would pay Northern Valley [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] *Id.* at Exhibit B.**

RESPONSE: [BEGIN CONFIDENTIAL]

**[END CONFIDENTIAL]**

**52. The agreement provides that Northern Valley would pay Global Conference a rate of [BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL] *Id.***

RESPONSE: Undisputed.

53. Consistent with the contracts, [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END  
CONFIDENTIAL] See Exhibit 18, Pascual Dep. Tr. pp. 23:17-21.

RESPONSE: [BEGIN CONFIDENTIAL]

**[END CONFIDENTIAL]**

54. In or about December 2006, Global Conference and Northern Valley executed an “Amendment 1” to the November 2005 Service Agreement. *See* Exhibit 18, Pascual Dep. Tr. pp. 28:19-20 and Pascual Dep. Exhibit 7 (attached as Exhibit 20 hereto); Exhibit 75, Northern Valley’s Response to Sprint’s Interrogatory No. 28. This agreement supersedes Exhibit B of the November 10, 2005 Service Agreement attached as Exhibit 19.

RESPONSE: Undisputed.

55. Amendment 1 provides that Global Conference will pay [BEGIN  
CONFIDENTIAL]

**[END CONFIDENTIAL] *Id.***

RESPONSE: [BEGIN CONFIDENTIAL]

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[REDACTED] [END CONFIDENTIAL]

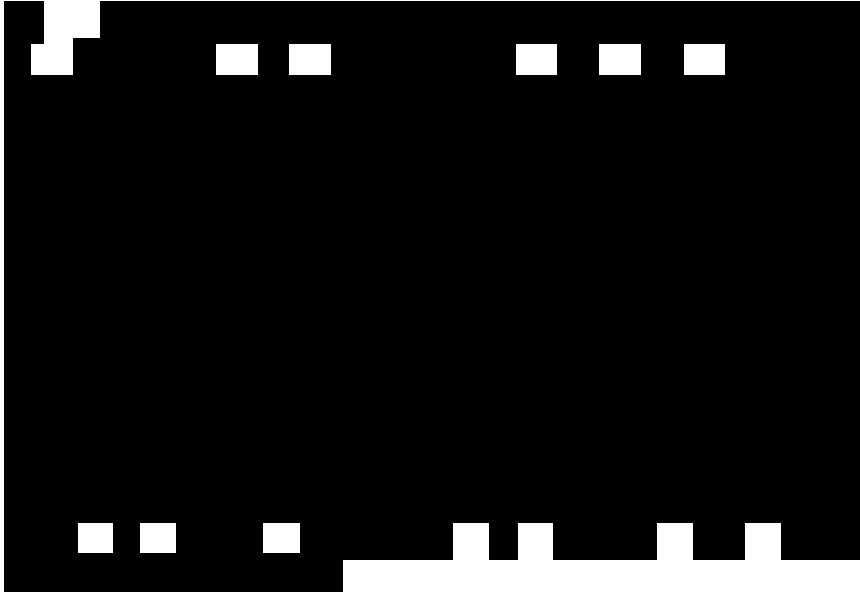
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RESPONSE: Undisputed.

57. The August 2007 Service Agreement provided that Northern Valley [BEGIN CONFIDENTIAL]  [END CONFIDENTIAL] *Id.*, ¶ 1.

RESPONSE: Undisputed that the referenced agreement reads as quoted, with revisions shown above in redline format. Sprint disputes any implication that Global Conference, at any time, received local exchange services, or was a local exchange customer, or that the facilities used to deliver calls to Global Conference were exchange facilities. *See* Sprint's SOF 233-249.

58. The August 2007 Service Agreement included the following paragraph:  
[BEGIN CONFIDENTIAL]



[END CONFIDENTIAL]

*Id.*, ¶ 23.



RESPONSE: Not disputed. [BEGIN CONFIDENTIAL] [REDACTED]

[END

CONFIDENTIAL]

**59. The August 2007 Service Agreement provided that Global Conference would pay Northern Valley [BEGIN CONFIDENTIAL] [REDACTED]**

**[END CONFIDENTIAL] *Id.* at Exhibit B.**

RESPONSE: Sprint does not dispute that the August 2007 Service Agreement contains those words, but Sprint affirmatively states the line charges and base marketing fee are a sham. *See* Sprint's Responses to NV's SOF 43 and 55.

**60. Global Conference and Northern Valley subsequently executed an Amendment 1 to the August 2007 Service Agreement on January 7, 2009 incorporating, among other things, a Contract-Based Compensation Rate. *See* Pascual Dep. Tr. pp. 34:3-21 and Pascual Dep. Exhibit 8 (attached as Exhibit 23 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 28.**

RESPONSE: Undisputed.

**61. Global Conference and Northern Valley subsequently executed an Amendment 2 to the August 2007 Service Agreement on September 15, 2009, modifying Exhibit D of that agreement. *See* Pascual Dep. Tr. 35:12-15 and Pascual Dep. Exhibit 9 (attached as Exhibit 24 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 28.**

RESPONSE: Undisputed.

**62. Global Conference and Northern Valley subsequently executed an Amendment 3 to the August 2007 Service Agreement on May 1, 2010, modifying Exhibit D of that agreement. *See* Pascual Dep. Tr. pp. 36:12-19 and Pascual Dep. Exhibit 10 (attached as Exhibit 25 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 28. The Amendment 3 also included Exhibit E, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 25.**

RESPONSE: Undisputed.

**63. Global Conference and Northern Valley entered into a Settlement Agreement on May 11, 2010, [BEGIN CONFIDENTIAL] [REDACTED]**

RESPONSE: Sprint does not dispute that Northern Valley and Global Conference were operated jointly and shared profits.

RESPONSE: [BEGIN CONFIDENTIAL]

65. The Telecommunications Service Agreement further provided that the [BEGIN CONFIDENTIAL] [REDACTED] [END] CONFIDENTIAL] *Id.* ¶ 7.

**[END CONFIDENTIAL]**

66. The Telecommunications Service Agreement set forth a list of services that would be provided to Global Conference by Northern Valley, including:

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

*Id.* at Exhibit A. The agreement also provided the costs that would be assessed for these telecommunications services. *Id.*

RESPONSE: Sprint does not dispute that these services were identified in the contract, with the addition of the revision shown about in redline format. [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

67. In October 2010, Global Conference and Northern Valley also executed a Marketing Agreement. *See* Pascual Dep. Tr. pp. 13:1-11 and Pascual Dep. Exhibit 5 (attached as Exhibit 28 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 28. The Marketing Agreement provides, *inter alia*, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 28 ¶ 2.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

68. The Marketing Agreement provides that Global Conference [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] *Id.* ¶ 4.

RESPONSE: Undisputed.

69. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] Exhibit 28 at Exhibit A.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

70. Prior to November 2010, Northern Valley did not send Global Conference a monthly invoice for telecommunications services. Northern Valley began sending monthly invoices to Global Conference in November 2010 for the provision of telecommunications services. *See* Declaration of Tanya Berndt (“Berndt. Decl.”), ¶ 10; Exhibit 29 hereto.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

71. Prior to December 2010, Global Conference did not tender a separate payment to Northern Valley for telecommunications services. Since December 2010, Global Conference has tendered a separate payment to Northern Valley for telecommunications. *See* Berndt Decl., ¶ 11; Exhibit 30 hereto; *see also* Exhibit 21, Placido Dep. Tr., pp. 31:17-23.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

72. All of the Agreements between Northern Valley and Global Conference included a confidentiality provision. Exhibit 19 ¶ 2; Exhibit 22 ¶ 2; Exhibit 26 ¶ 4; Exhibit 27 ¶ 1; Exhibit 28 ¶ 1.

RESPONSE: Undisputed.

73. Northern Valley provided Global Conference with DID connections, DID numbers, and ANI. It also provided SS7 signaling, installation of conference equipment, co-location and telecommunications rack space, dedicated Internet connectivity, electrical power, fire prevention, and back-up power. *See* Exhibit 75, Northern Valley Response to Sprint's Interrogatory No. 29.

RESPONSE: Sprint does not dispute this so long as the definition of "DID Connections" is established. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

**74. Global Conference installed its first conference bridge in the Groton Central Office in or about November 2005; connectivity was provided by 10 ISDN PRIs. *Id.***

RESPONSE: Undisputed that Global Conference placed its first bridge, and received calls, in an exchange in which Northern Valley was not certificated to provide service.

**75. Global Conference added 10 ISDN PRIs in the Groton Central office in or about May 2006. *Id.*<sup>8</sup>**

RESPONSE: Undisputed that Global Conference placed its first bridge, and received calls, in an exchange in which Northern Valley was not certificated to provide service.

**76. Two Global Conference bridges were relocated to Redfield in or about November 2007; connectivity to each was provided by 10 ISDN PRIs. *Id.***

RESPONSE: Disputed. *See* Sprint's Response to NV's SOF 46.

**77. Global Conference installed a bridge in the Redfield Central Office in or about November 2008; connectivity was provided by 959 SIP ports. *Id.***

RESPONSE: Undisputed.

**78. Global Conference installed a backup bridge in the Redfield Central Office in or about March 2009; connectivity was provided by 32 ISDN PRIs. *Id.***

RESPONSE: Undisputed.

**79. Global Conference installed a bridge in the Aberdeen Central Office in or about May 2009; connectivity was provided by 959 SIP trunks. *Id.***

RESPONSE: Undisputed.

## **B. A+ CONFERENCING**

**80. A+ Conferencing, Ltd. ("A+") is a Conference Call Provider. *See also* Deposition Transcript of Michael Burns, ("Burns Dep. Tr."), pp. 16:21 – 17:12 (attached hereto as Exhibit 31) ("A+ Conferencing is involved in audio, web and desktop video conferencing services for businesses and nonprofit organizations. . . .")**

RESPONSE: Undisputed.

**81. A+'s customers include "multi-level marketing companies" that utilize the conference bridges for "recruiting calls or . . . motivational calls, meeting type calls with**

<sup>8</sup> The traffic terminated to Global Conference from November 2005 to November 2007 is not part of this Motion for Summary Judgment.

members where they talk about new products and services and motivate the sales force” as well as “religious organizations that are on Sundays typically, and those broadcast the services to the homebound.” *Id.* at 93:7 – 94:1.

RESPONSE: Undisputed.

82. A+ Conferencing is also referred to as One Rate Conferencing (“One Rate”). *Id.*, at 9:25-10:6. One Rate was a formal legal entity known as One Rate Conferencing, LLC. *Id.* at 12:24-13:2. One Rate is no longer a formal legal entity, and has been assumed by A+. *Id.* at 13:3 – 24.

RESPONSE: Undisputed.

83. A+ receives or received telephone services from a variety of telephone companies, including [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.* at 20:24 – 22:9. AT&T and Level 3 provide local exchange services for A+’s operation at its “megacenter” in Houston, Texas. *Id.* at 104:20 – 105:7.

RESPONSE: Undisputed.

84. With regard to the calls terminating at Northern Valley, A+ Conferencing charges its customers to host conference calls. *Id.* at 28:23 – 29:11. The charges may be either a flat rate, unlimited plan or based on a per-minute charge. *Id.* As a general matter, A+ does not offer “free” conference calling. *Id.* The exceptions to this policy are for limited free trial periods for prospective customers. *Id.*

RESPONSE: Undisputed.

85. On or about April 12, 2007, Northern Valley and A+ entered into an Independent Contractor Agreement. *See* Burns Dep. Tr. pp. 61:8-14 and Burns Dep. Exhibit 12 (attached as Exhibit 32 hereto); Exhibit 75, Northern Valley’s Response to Sprint’s Interrogatory No. 72.

RESPONSE: Undisputed.

86. The April 2007 Independent Contractor Agreement provided that A+ would [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 32 ¶ 1.

RESPONSE: Undisputed.

87. The April 2007 Independent Contractor Agreement also provided that Northern Valley would, *inter alia*, provide [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] *Id.* ¶ 2.

RESPONSE: Undisputed.

88. Under the April 2007 Independent Contractor Agreement, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Burns Dep. Tr. pp. 51:21 – 52:10; 64:15-23.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

89. On or about January 6, 2009, A+ and Northern Valley executed a First Addendum to the April 2007 Independent Contractor Agreement. *See* Burns Dep. Tr. pp. 65:14-21 and Burns Dep. Exhibit 13 (attached as Exhibit 33 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 72.

RESPONSE: Undisputed.

90. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 33.

RESPONSE: Undisputed.

91. On or about September 15, 2009, A+ and Northern Valley executed a Second Addendum to the April 2007 Independent Contractor Agreement. *See* Burns Dep. Tr. pp. 68:19-24 and Burns. Dep. Exhibit 14 (attached as Exhibit 34 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 72.

RESPONSE: Undisputed.

92. The Second Addendum modified [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Burns Dep. Tr. pp. 69:20-23; Ex 34.



RESPONSE: Undisputed.

**93. On or about May 13, 2010, A+ and Northern Valley executed a Third Addendum to the April 2007 Independent Contractor Agreement. See Burns Dep. Tr. pp. 70:11-14 and Burns Dep. Exhibit 15 (attached as Exhibit 35 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 72.**

RESPONSE: Undisputed.

**94. The Third Addendum modified [BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL] Exhibit 35.**

RESPONSE: Undisputed.

**95. On or about August 4, 2010, A+ and Northern Valley subsequently executed a Fourth Addendum to the April 2007 Independent Contractor Agreement. See Burns Dep. Tr. pp. 72:18-23 and Burns Dep. Exhibit 16 (attached as Exhibit 36 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 72.**

RESPONSE: Undisputed.

**96. The Fourth Addendum modified [BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL] Exhibit 36.**

RESPONSE: Undisputed.

**97. On or about October 31, 2010, A+ and Northern Valley executed a Telecommunications Service Agreement. See Burns Dep. Tr. pp. 73:21-74:6 and Burns Dep. Exhibit 17 (attached as Exhibit 37 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 72. The Telecommunications Service Agreement provides, *inter alia*, that it would have an effective date of July 23, 2010. Exhibit 37 ¶ 2.**

RESPONSE: [BEGIN CONFIDENTIAL]

114

[END]

**CONFIDENTIAL]** *Id.* ¶7.

**CONFIDENTIAL]** [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

[END

**CONFIDENTIAL]**

[BEGIN CONFIDENTIAL]

[illegible]

**[END CONFIDENTIAL]**

*Id.* at Exhibit A; *see also* Burns Dep. Tr. pp. 88:21 – 92:10 (discussing services provided by Northern Valley). The agreement also provides [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 37 at Exhibit A.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [END

CONFIDENTIAL]

100. On or about October 31, 2010, A+ and Northern Valley also executed a Marketing Agreement. *See* Burns Dep. Tr. pp. 74:10-14 and Burns Dep. Exhibit 18 (attached as Exhibit 38 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 72. The Marketing Agreement provides, *inter alia*, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 38 ¶ 2.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

101. The Marketing Agreement provides that One Rate [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] Exhibit 38 ¶ 4.

RESPONSE: Undisputed.

102. [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] *Id.*

RESPONSE: [BEGIN CONFIDENTIAL]

[END

CONFIDENTIAL]

103. Prior to January 2011, Northern Valley did not send A+ a monthly invoice for telecommunications services. Northern Valley began sending monthly invoices to A+ in January 2011 for the provision of telecommunication services. *See* Berndt Decl., ¶ 13; Exhibit 39 hereto.

RESPONSE: Undisputed that Northern Valley did not send invoices to A+/One Rate prior to January 2011. [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

104. Prior to January 2011, A+ did not tender a separate payment to Northern Valley for telecommunications services. A+ began tendering a separate payment to Northern Valley for telecommunication services in January 2011. *See* Berndt Decl., ¶ 14; Exhibit 40 hereto.

RESPONSE: [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

105. All of the Agreements between Northern Valley and A+ included a confidentiality provision. Exhibit 32 ¶ 14; Exhibit 37 ¶ 1; Exhibit 38 ¶ 1.

RESPONSE: Undisputed.

**106. At all times relevant to this dispute, A+'s conferencing equipment has been co-located in Northern Valley's Redfield Central Office. Exhibit 75, Northern Valley Response to Sprint's Interrogatory No. 73.**

RESPONSE: Disputed. As set forth in Sprint's Response to NV's SOF 88, A+/One Rate has never owned any of the conferencing equipment to which its numbers were assigned.

**C. CLEC CONNECT**

**107. CLEC Connect, LLC ("CLEC Connect") is a Conference Call Provider. Groft Decl., ¶ 15.**

RESPONSE: Undisputed.

**108. In or about December 2006, Northern Valley and CLEC Connect entered into a Wholesale Services Agreement. Groft Decl., ¶ 16; Exhibit 41 hereto; Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 84.**

RESPONSE: Undisputed.

**109. The December 2006 Wholesale Services Agreement provided that CLEC Connect would, *inter alia*, [BEGIN CONFIDENTIAL] [REDACTED] [BEGIN CONFIDENTIAL] Exhibit 41 ¶ 2.**

RESPONSE: Undisputed.

**110. The December 2006 Wholesale Service Agreement provided that CLEC Connect would compensate Northern Valley [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [END CONFIDENTIAL] *Id.* ¶ 3.**

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

**111. The December 2006 Wholesale Service Agreement provided that Northern Valley will, *inter alia*:**

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

*Id.* ¶ 1.

RESPONSE: [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

112. The agreement provided that Northern Valley would compensate CLEC Connect [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] *Id.* ¶ 3.

RESPONSE: Sprint does not dispute that the agreement contains those words, but Sprint affirmatively states that the line charges are a sham. *See* Sprint's Responses to NV's SOF 43 and 55.

113. On or about February 21, 2007, Northern Valley and CLEC Connect entered into another Wholesale Services Agreement. *See* Exhibit 2, Groft Vol. I. Dep. Tr. pp. 249:11-17 and Groft Vol. 1. Dep. Exhibit 18 (attached as Exhibit 42 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 84.

RESPONSE: Undisputed.

114. The February 21, 2007, Wholesale Services Agreement provides, *inter alia*, that CLEC Connect [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] *See* Exhibit 42, ¶ 2

RESPONSE: Sprint disputes that CLEC Connect obtained local service for the reasons set forth in Sprint's SOF 233-249.

115. The compensation due to Northern Valley and the compensation due to CLEC Connect did not change between the December 2006 Wholesale Service Agreement

and the February 21, 2007, Wholesale Services Agreement. Compare Exhibit 41, ¶ 3 with Exhibit 42, ¶ 3.

RESPONSE: Sprint disputes that the base marketing fee was compensation due to CLEC Connect for the reasons set forth in Sprint's Responses to NV's SOF 43 and 55.

**116. On or about January 6, 2009, CLEC Connect and Northern Valley executed a First Addendum to the February 2007 Wholesale Services Agreement. Groft Decl., ¶ 17; Exhibit 43 hereto; Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 84.**

RESPONSE: Undisputed.

**117. The First Addendum revised the portion of the marketing fee to be paid by Northern Valley to CLEC Connect for [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Groft Decl., ¶ 18; Exhibit 43.**

RESPONSE: Undisputed.

**118. CLEC Connect and Northern Valley subsequently executed a Third Addendum to the February 21, 2007.<sup>9</sup> Groft Decl., ¶ 19; Exhibit 44 hereto.**

RESPONSE: Undisputed.

**119. The Third Addendum revised the portion of the marketing fee to be paid by Northern Valley to CLEC Connect for [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Groft Decl., ¶ 20; Exhibit 44 hereto.**

RESPONSE: Undisputed.

**120. On or about October 30, 2010, CLEC Connect and Northern Valley executed a Telecommunications Service Agreement. Groft Decl., ¶ 21; Exhibit 45 hereto. The Telecommunications Service Agreement provides, *inter alia*, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 45 ¶ 2.**

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[END CONFIDENTIAL]

121. The 2010 Telecommunications Service Agreement further provided that  
[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] *Id.* ¶ 7.

RESPONSE: Sprint does not dispute that the referenced agreement reads as quoted. [BEGIN  
CONFIDENTIAL]

[END CONFIDENTIAL]

122. The 2010 Telecommunications Service Agreement sets forth a list of services that would be provided to CLEC Connect by Northern Valley, including:

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]



*Id.*, at Exhibit A. The agreement also provides the costs that would be assessed for these telecommunications services. *Id.*

RESPONSE: Sprint does not dispute that these services were identified in the contract.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

123. In or about October 2010 CLEC Connect and Northern Valley also executed a Marketing Agreement. Graft Decl., ¶ 22; Exhibit 46 hereto. The Marketing Agreement provides, *inter alia*, [BEGIN CONFIDENTIAL]  
[END CONFIDENTIAL] *Id.* ¶ 2.

RESPONSE: [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

124. The Marketing Agreement provides that CLEC Connect [BEGIN CONFIDENTIAL]  
[END CONFIDENTIAL] *Id.* ¶ 4.

RESPONSE: Undisputed.

125. [BEGIN CONFIDENTIAL] [REDACTED]

[END

CONFIDENTIAL] *Id.*

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[END

CONFIDENTIAL]

126. All of the Agreements between Northern Valley and CLEC Connect included a confidentiality provision. Exhibit 41 ¶ 7; Exhibit 45 ¶ 1; Exhibit 46 ¶ 1.

RESPONSE: Undisputed.

127. CLEC Connect stopped receiving services from Northern Valley in or about May 2011. Berndt Decl., ¶ 16; Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 85.

RESPONSE: Undisputed.

128. CLEC Connect did not tender a separate payment to Northern Valley for telecommunications services either before or after executing the 2010 Telecommunications Service Agreement. Berndt Decl., ¶ 17.

RESPONSE: It is undisputed that CLEC Connect never made any payment to Northern Valley for services received.

129. During the time period in which it received service from Northern Valley, CLEC Connect's conference bridges were located in Northern Valley's Redfield Central Office. Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 87.

RESPONSE: Undisputed.

#### D. CALL ALL

130. CallAll, LLC ("CallAll") is a Conference Call Provider. Groft Decl., ¶ 23.

RESPONSE: Undisputed.

131. In or about November 2007, Northern Valley and CallAll entered into a Service Agreement. Groft Decl., ¶ 24; Exhibit 47 hereto; Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 96.

RESPONSE: Undisputed.

132. The November 2007 Service Agreement provided that Northern Valley [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

Exhibit 47, ¶ 1.

RESPONSE: Sprint does not dispute that the referenced agreement reads as quoted, with the addition of the phrase shown above in redline format, which was left out.

133. The agreement provided that CallAll would pay Northern Valley [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.* at Exhibit B.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

134. The agreement provided that Northern Valley would pay CallAll a [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] *Id.*

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

135. CallAll and Northern Valley subsequently executed a First Addendum to their Services Agreement on January 6, 2009. Groft Decl., ¶ 25; Exhibit 48 hereto; Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 96.

RESPONSE: Undisputed.

136. The First Addendum modified [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Exhibit 48.

RESPONSE: Undisputed.

137. Northern Valley provided to CallAll:  
[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

Exhibit 75, Northern Valley Response to Sprint Interrogatory No. 96.

RESPONSE: Sprint does not dispute that these services were identified in the contract.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

138. The agreement between Northern Valley and CallAll included a confidentiality provision. Ex. 47, ¶ 2.

RESPONSE: Undisputed.

139. CallAll did not tender a separate payment to Northern Valley for telecommunications services. Berndt Decl., ¶ 19.

RESPONSE: Undisputed.

**140. CallAll installed its conference equipment in Northern Valley's Redfield Central Office in or about December 2007 and removed the bridge and stopped receiving service in February 2008. Berndt Decl., ¶ 20; Exhibit 75, Northern Valley Response to Sprint Interrogatory No. 96.**

RESPONSE: Undisputed.

**E. FREE CONFERENCING**

**141. Free Conferencing Corporation ("Free Conferencing") is a Conference Call Provider. Groft Decl., ¶ 26.**

RESPONSE: Undisputed.

**142. In or about January 2009, Northern Valley and Free Conferencing entered into a Service Agreement. Exhibit 4, Groft Vol. II Dep. Tr. pp. 7:4-9; Groft Vol. II Dep. Exhibit 20 (attached as Exhibit 49 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 44.**

RESPONSE: Undisputed.

**143. The January 2009 Service Agreement provided that Northern Valley**  
**[BEGIN CONFIDENTIAL]**

[REDACTED]

**[END**

**CONFIDENTIAL] See Exhibit 49 ¶ 1.**

RESPONSE: Undisputed that the referenced agreement reads as quoted. Sprint disputes any implication that Free Conferencing, at any time, received local exchange services, or was a local exchange customer, or that the facilities used to deliver calls to Free Conferencing were exchange facilities. See Sprint's SOF 233-249.

**144. The agreement provided that Free Conferencing would pay Northern Valley**  
**[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**  
**Id. at Exhibit B.**

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

145. The agreement provided that Northern Valley would pay Free Conferencing [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] *Id.*

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

146. Free Conferencing and Northern Valley subsequently executed a First Addendum to the January 29, 2009, Service Agreement on June 24, 2010. Groft Decl., ¶ 27; Exhibit 50 hereto; Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 44.

RESPONSE: Undisputed.

147. The First Addendum modified [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Groft Decl., ¶ 28; Exhibit 50.

RESPONSE: Undisputed.

148. In or about January 2011, Free Conferencing and Northern Valley executed a Telecommunications Service Agreement. Exhibit 4, Groft Vol. II. Dep. Tr. pp. 26:21-27:4 and Groft Vol. II Dep. Exhibit 22 (attached as Exhibit 51 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 44. The Telecommunications Service Agreement provides, *inter alia*, that it would have an effective date of July 23, 2010. See Exhibit 51 ¶ 2.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

149. The Telecommunications Service Agreement further provided that [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.* ¶ 7.

RESPONSE: Sprint does not dispute that the referenced agreement reads as quoted. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

150. The Telecommunications Service Agreement sets forth a list of services that would be provided to Free Conferencing by Northern Valley, including:

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

*Id.* at Exhibit A. The agreement also provides the costs that would be assessed for these telecommunications services. *Id.*

RESPONSE: Sprint does not dispute that these services were identified in the contract.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

151. In or about February 2011, Free Conferencing and Northern Valley also executed a Marketing Agreement. Exhibit 4, Groft Vol. II Dep. Tr. pp. 26:21-27:4; Groft Vol. II Dep. Exhibit 21 (attached as Exhibit 52 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 44. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Exhibit 52 ¶ 2.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

152. The Marketing Agreement provides that Free Conferencing [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] *Id.* ¶ 4.

RESPONSE: Undisputed.

153. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]



[REDACTED]

[END CONFIDENTIAL] *Id.*

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

154. Prior to March 2011, Northern Valley did not send Free Conferencing a monthly invoice for telecommunications services. Northern Valley began sending monthly invoices to Free Conferencing in March 2011 for the provision of telecommunications services. *See* Berndt Decl., ¶ 22; Exhibit 53 hereto.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

155. Prior to March 2011, Free Conferencing did not tender a separate payment to Northern Valley for telecommunications services. Free Conferencing began tendering a separate payment to Northern Valley for telecommunications services in March 2011. *See* Berndt Decl., ¶ 23; Exhibit 54 hereto.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

156. All of the agreements between Northern Valley and Free Conferencing included a confidentiality provision. *See* Exhibit 49 ¶ 2; Exhibit 51 ¶ 1; Exhibit 52 ¶ 1.

RESPONSE: Undisputed.

157. At all times relevant to this dispute, Free Conferencing's equipment has been co-located in Northern Valley's Redfield Central Office. Exhibit 75, Northern Valley response to Sprint's Interrogatory No. 45.

RESPONSE: Undisputed.

**F. SANG**

158. Sang Capital Group, LLC ("Sang") owns conference call bridges. *See* Deposition Transcript of Alan Alpert, ("Alpert Dep. Tr."), 21:8-11 (July 21, 2011) (attached hereto as Exhibit 55). Smart Office Solutions, a separate company from Sang, works to market and sell conference calling services. *Id.* at 21:8 – 22:6.

RESPONSE: Undisputed.

159. Smart Office Solutions charges consumers for the conference calling services that they provide. *Id.* at 23:14 – 22. The exception to this is for "church groups and prayer groups." *Id.* at 46:23-25. For those customer with a religious affiliation who use the conference calling for religious purposes, Smart Office Solutions gives back by "zero[ing] out that invoice for them." *Id.* at 46:16 – 47:15.

RESPONSE: Undisputed.

160. The majority of Smart Office Solution's clients "are from the direct sales industry" and Smart Office Solutions helps to fulfill "a variety of communication-oriented" needs for those clients, including conference calling. *Id.* at 23:23 – 24:6. Most of the traffic to Sang's conference bridges is generated in the evening, when people utilize the conference bridges as part of "second income opportunities," which is when "they can really reach their audience." 91:1 – 92:14. Sang describes its customers as "business customers," "coaches," and "some prayer groups." *Id.* at 46:16 – 21.

RESPONSE: The phrase "including conference calling" in the first sentence is not in the cited testimony. Otherwise undisputed.

161. On or about May 4, 2009, Northern Valley and Sang entered into a Service Agreement. Exhibit 55, Alpert Dep. Tr. pp. 77:14-78:4 and Alpert Dep. Exhibit 8 (attached as Exhibit 56 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 13.

RESPONSE: Undisputed.

162. In selecting Northern Valley as a local exchange carrier, it was [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

Exhibit 55, Alpert Dep. Tr. pp. 52:1-9. Further, Sang was interested in Northern Valley because they were going to be able to explore [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] *Id.* at 52:16 –

25; 80:8-15. Ultimately, Sang was most concerned “about service, which was [its] number one concern. [Sang’s] number two concern was the fact of the cost of my equipment and what it cost me to have my equipment there.” *Id.* at 93:20 – 94:15.

RESPONSE: Undisputed.

163. The May 2009 Service Agreement provided that Northern Valley [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] Exhibit 56 ¶ 1.

RESPONSE: Undisputed that the referenced agreement reads as quoted. Sprint disputes any implication that Sang, at any time, received local exchange services, or was a local exchange customer, or that the facilities used to deliver calls to Sang were exchange facilities. *See* Sprint’s SOF 233-249.

164. The agreement provided that Sang would pay Northern Valley [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.* at Exhibit B.

RESPONSE: Sprint does not dispute that the agreement contains those words, but Sprint affirmatively states the line charge is a sham. *See* Sprint’s Responses to NV’s SOF 43 and 55.

165. The agreement provided that Northern Valley would pay Sang [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] *Id.*

RESPONSE: Sprint does not dispute that the August 2007 Service Agreement contains those words, but Sprint affirmatively states the base marketing fee is a sham. *See* Sprint's Responses to NV's SOF 43 and 55.

**166.** Sang and Northern Valley subsequently executed a First Addendum to the May 4, 2009, Service Agreement on May 31, 2010. Exhibit 55, Alpert Dep. Tr. pp. 96:20-97:7 and Alpert Dep. Exhibit 9 (attached as Exhibit 57 hereto); Exhibit 75, Northern Valley's Response to Sprint's Interrogatory No. 13.

RESPONSE: Undisputed.

**167.** The First Addendum modified [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[END CONFIDENTIAL] *See* Exhibit 57.

RESPONSE: Undisputed.

**168.** On or about June 9, 2011, Sang and Northern Valley executed a Telecommunications Service Agreement. Exhibit 55, Alpert Dep. Tr. pp. 104:12-16; Alpert Dep. Exhibit 12 (attached as Exhibit 58 hereto); Northern Valley's Response to Sprint's Interrogatory No. 13. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL] Exhibit 58 ¶ 2.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

**169.** The Telecommunications Service Agreement further provided that [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [END CONFIDENTIAL] *Id.* ¶ 7.

RESPONSE: Sprint does not dispute that the referenced agreement reads as quoted. [BEGIN  
CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END  
CONFIDENTIAL]

170. The Telecommunications Service Agreement set forth a list of services that would be provided to Sang by Northern Valley, including:

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

*Id.* at Exhibit A; *see also* Exhibit 55, Alpert Dep. Tr. pp. 125:8 – 127:14. The agreement also provided the costs that would be assessed for these telecommunications services. Exhibit 58.

RESPONSE: Sprint does not dispute that these services were identified in the contract.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

171. On or about June 9, 2011, Sang and Northern Valley also executed a Marketing Agreement. Exhibit 55, Alpert Dep. Tr. pp. 101:16-21 and Alpert Dep. Exhibit 11 (attached as Exhibit 59 hereto). [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL] See Exhibit 59 ¶ 2.

RESPONSE: See Sprint's Response to NV's SOF 168.

172. The Marketing Agreement provides that Sang [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL]  
*Id.* ¶ 4.

RESPONSE: Undisputed, but in the third line "Customer's" would be more accurately stated as "[Northern Valley]" based on Northern Valley's method of using brackets.

173. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL] *Id.*

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [END CONFIDENTIAL]

174. Prior to August 2011, Northern Valley did not send Sang a monthly invoice for telecommunications services. Northern Valley began sending monthly invoices to Sang in August 2011 for the provision of telecommunication services. See Berndt Decl., ¶ 25; Exhibit 60 hereto.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

175. Prior to July 2011, Sang did not tender a separate payment to Northern Valley for telecommunications services. Sang began tendering a separate payment to Northern Valley for telecommunications services in July 2011. *See* Berndt Decl., ¶ 26; Exhibit 61 hereto.

RESPONSE: [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] [END CONFIDENTIAL]

176. All of the Agreements between Northern Valley and Sang included a confidentiality provision. Exhibit 56 ¶ 2; Exhibit 58 ¶ 1; Exhibit 59 ¶ 1.

RESPONSE: Undisputed.

177. At all times relevant to this dispute, Sang's conferencing equipment has been co-located in Northern Valley's Redfield Central Office. Exhibit 75, Northern Valley Response to Sprint's Interrogatory No. 14.

RESPONSE: Undisputed.

#### **SPRINT'S REFUSAL TO PAY FOR THE ACCESS SERVICES IT HAS RECEIVED**

178. As an IXC, Sprint provides long-distance phone service to its customers throughout the country. To do so, Sprint uses, *inter alia*, phone lines owned by LECs, such as Northern Valley. Sprint's Answer to Amended Complaint of South Dakota Network (June 21, 2010), ¶ 4; Sprint's Answer, Affirmative Defenses, and Counterclaims to the Complaint of South Dakota Network (Nov. 23, 2009), ¶ 30.

RESPONSE: Undisputed.

179. Sprint utilized, and continues to utilize, the originating and terminating access services provided by Northern Valley; without Northern Valley's services, Sprint's customers' calls could not be completed. Berndt Decl., ¶ 4.

RESPONSE: Sprint disputes this statement. Ms. Berndt's statement is either a legal conclusion and/or an opinion on an ultimate issue, neither of which constitutes admissible evidence.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Sprint does not dispute that the calls from Sprint customers to CCC numbers could not complete unless switched by Northern Valley. This does not mean that the calls are access calls or otherwise compensable.

**180. Specifically, Northern Valley has provided Sprint with Feature Group D (“FGD”) services, which are only to be used with switched access traffic. Groft Decl., ¶ 30.**

RESPONSE: Sprint denies the legal conclusion that calls must be switched access calls if delivered on Feature Group D trunks. As described herein, calls must meet the requirements of the tariffs and applicable law to be subject to switched access charges. As numerous courts have held, it is the nature of the traffic, not simply the facilities, that determines whether access is due. *See, e.g., Rural Iowa Indep. Tel. Assoc. v. Iowa Utils. Bd.*, 385 F. Supp. 2d 797 (S.D. Iowa 2005) (finding access charges inapplicable to wireless calls delivered over Qwest and INS trunks that also carried long distance traffic), *aff’d* 476 F.3d 572 (2007).

**181. Northern Valley has billed Defendant Sprint for FGD intrastate Switched Access Service charges in accordance with its intrastate tariff. From September 2007 – December 2010, Sprint refused to pay Northern Valley’s invoices with regard to any traffic, including, but not limited to, traffic terminating to conference-call providers. Berndt Decl., ¶ 7.**

RESPONSE: Disputed. Sprint paid the October 2007 invoice in full. *See Roach Aff.* ¶ 9. 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. *See Roach Aff.* ¶ 12.

**182. Sprint has conceded that it is not unlawful for Northern Valley to provide telecommunications services to Conference Call Providers. *See Sprint’s Responses to SDN’s Second Set of Interrogatories, Doc Requests, and RFAs, Int. 5, 6, 7, 8, 10* (attached as Exhibit 76 hereto) (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.”).**



RESPONSE: Disputed. Sprint has stated it does not believe that the traffic is illegal. In other words, it is not illegal for the calls to be made. Northern Valley's business practices have violated the law in numerous respects. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

**183. Sprint has made no demand that Northern Valley block their traffic or not allow it to be terminated to the Conference Calling Services. Groft Decl., ¶ 31. Nor has Sprint come to this Commission to seek authority to block its own traffic. *Id.***

RESPONSE: Disputed that this fact is material to the pending motion. Sprint has made no formal demand that Northern Valley block Sprint's traffic. Nor has Northern Valley asked to block traffic or attempted to enforce any rights it has to terminate service. As Sprint has explained previously, the FCC has prohibited call blocking, and Sprint does not expect that the Commission would appreciate consumer calls being disrupted due to carrier disputes.

**184. As noted above, beginning in or about September 2007, Sprint stopped paying Northern Valley for all terminating access charges, including both interstate and intrastate charges. Groft Decl., ¶ 32; *see also* Various Dispute Communications (attached as Exhibit 62 hereto). Sprint's statement for initiating these disputes was:**

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[END CONFIDENTIAL]

*Id.*

RESPONSE: Undisputed.

**185. Sprint later changed the reason for its dispute to the following:**

[BEGIN CONFIDENTIAL]  
[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

*See, e.g.,* Email from C. Wolfskill-Bowen and dispute notice (Feb. 12, 2009) (attached as Exhibit 63 hereto).

RESPONSE: Undisputed.

186. 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. Groft Dec., ¶ 33; Email from C. Wolfskill-Bowen and dispute notice (Mar. 19, 2009) (attached as Exhibit 64 hereto).

RESPONSE: Undisputed.

187. Sprint has an unpaid balance for intrastate traffic related to calls that Sprint's customers' made to traditional residential and business end users. Berndt Decl., ¶ 27. Sprint has also accrued and continues to accrue late fees on the unpaid intrastate balance. *Id.*

RESPONSE: Sprint does not dispute that it has not issued a check to Northern Valley for some amounts billed to it for traditional traffic during those periods. Sprint asserts that it has paid in the form of a credit and/or that it is not legally obligated to issue a check to Northern Valley given its defenses and counterclaims that are pending in federal court. Sprint denies any late fees are due.

In addition, Sprint objects to and disputes Ms. Berndt's testimony with respect to Northern Valley's accounting that purports to show outstanding amounts for traditional intrastate traffic of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Northern Valley's Exhibit 74 lacks proper foundation, is not explained, and does not show the application of the payments Sprint made in December 2010 and March 2011. *See* Roach Aff. ¶ 14, NV's Ex. 74. Sprint's calculations show the outstanding amounts for traditional intrastate traffic being

[BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] See Roach Aff. ¶ 13 and Ex. A.

**188. Sprint has an unpaid balance for intrastate traffic related to calls that Sprint's customers' made to Conference Calling Services. Berndt Decl., ¶ 30. Sprint has also accrued and continues to accrue late fees on the unpaid intrastate balance. *Id.***

RESPONSE: Sprint does not dispute Northern Valley's statement of intrastate charges billed by Northern Valley for CCC traffic, except to the extent Northern Valley's accountings go beyond traffic billed on or before August 2011. Sprint denies that these amounts are owed, or that late charges are due.

**189. Sprint's ability to send calls to and receive calls from the residences and businesses connected to Northern Valley's network is a valuable service. Because of Northern Valley's service, Sprint is able to bill its long-distance customers for long distance services, and receive payment from those customers. Berndt Decl., ¶ 6.**

RESPONSE: Sprint objects to and disputes Ms. Berndt's testimony about Sprint's billing to and collection of charges because she lacks personal knowledge with respect to those facts. Sprint disputes that this fact is material to the pending motions. The Commission has already decided that this case is about the application of tariffs, not about Sprint's revenues.

**190. Northern Valley has repeatedly made demand of Sprint to pay the outstanding charges, including the amounts due for undisputed traffic. Groft Decl., ¶ 34; see also Exhibit 62; Exhibit 65 (denying dispute for lack of sufficient information to investigate); Exhibit 66 (denying dispute for lack of sufficient information to investigate); Exhibit 67 (denying dispute for lack of sufficient information to investigate); Exhibit 68 (denying dispute for lack of sufficient information to investigate); Exhibit 69 (denying disputed due to pending litigation); Exhibit 70 (letter seeking payment of undisputed traffic); Exhibit 71 (email from Sprint indicating that will initiate a review regarding the request for payment of the undisputed traffic).**

RESPONSE: Sprint does not dispute that Northern Valley has demanded payment of its invoices.

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

RESPONSE: Sprint disputes that this purported fact is material to the pending motions.

**192. First, in 2010, HB 1097 would have imposed a civil penalty on anyone who assessed an “access stimulation charge.” See 2010 HB 1097 (attached as Exhibit 72 hereto). The bill failed in the House of Representatives with a vote of 31 in favor to 37 opposed.**

RESPONSE: Sprint disputes that this purported fact is material to the pending motions.

**193. The next year, the Senate Bill 87 reflected a modified version of HB 1097. See 2011 SB 87 (attached as Exhibit 73 hereto). It too would have imposed civil penalties on local exchange carriers that assessed an “access stimulation charge.” The bill failed to be passed out of 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.**

RESPONSE: Sprint disputes that this purported fact is material to the pending motions.

**194. Sprint’s withholding, and the litigation that has followed, has been costly for Northern Valley. Groft Decl., ¶ 37. 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. Id. These cases have drained Northern Valley of resources that it otherwise would have used to expand and upgrade its service offerings in the state. Id., ¶ 38.**

RESPONSE: Disputed. First, Sprint disputes that this purported fact is material to the pending motions. Second, this statement lacks proper foundation and violates the best of evidence rule. Such a statement needs to be supported by documentation in order to be admissible. In addition, Sprint’s Ex. 128 contains payout records that show the CCCs’ share of profits (even with Sprint and Qwest disputing) to be approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] through early 2011. The Commission should reject this self-serving, unsupported statement.

**195. Sprint claims that conference calling companies “are not end users” under Northern Valley’s tariff. See Sprint Communications Co.’s Third Party Complaint, ¶ 13.**

RESPONSE: Sprint does not dispute it takes this position, among others.

**196. Sprint currently owes [BEGIN CONFIDENTIAL] [REDACTED]**

[REDACTED]

[REDACTED] [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] As an initial matter, Northern Valley's accounting cannot be relied on because it is not explained and does not identify how Sprint was given credit for the traditional traffic payments it made of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in December 2010 and March 2011. Based on Sprint's analysis, it appears 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 (as reflected in Ms. Roach's affidavit) to reduce its interstate refund claim by the amount of approved interstate charges, and Ms. Roach's calculations reflect that practice. *See* Roach Aff. ¶ 15.

**197. Sprint also owes [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in interest on the unpaid balance relating to traditional residential and business customers. *See* Berndt Decl., ¶ 29; Exhibit 74 hereto.**

RESPONSE: Disputed. Sprint disputes that it owes any interest, and disputes Northern Valley's interest calculations for two reasons. First, Northern Valley has neither provided the underlying calculations nor explained the methodology used, and Ms. Roach, who has examined the numbers, is unable to understand how the numbers were generated. *See* Roach Aff. ¶ 14. Second, 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. *See* Roach Aff. ¶ 16. The LECA tariff provision relating to late payment charges has not changed since 1991. *See* LECA Tariff § 2.4.1(C)(2).

**198. Sprint currently owes [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in intrastate access charges related to long-distance traffic terminating to Northern Valley's Conferencing Call Providers. *See* Berndt Decl., ¶ 31; Exhibit 74 hereto.**

RESPONSE: Undisputed, except to the extent Northern Valley's accountings go beyond traffic billed on or before August 2011.

**199. Sprint also owes [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in interest on the unpaid balance relating to traffic to the Conferencing Call Providers. See Berndt Decl., ¶ 32; Exhibit 74 hereto.**

RESPONSE: Disputed. Sprint disputes that it owes any interest, and disputes Northern Valley's interest calculations for two reasons. First, Northern Valley has neither provided the underlying calculations nor explained the methodology used, and Ms. Roach, who has examined the numbers, is unable to understand how the numbers were generated. See Roach Aff. ¶ 14. Second, Northern Valley's Exhibit 74 indicates that it used two separate interest rates, but does not identify the rates it used or its reason for believing the tariff rate changed. See Roach Aff. ¶ 16. The LECA tariff provision relating to late payment charges has not changed since 1991. See LECA Tariff § 2.4.1(C)(2).

**SPRINT'S ADDITIONAL FACTS RELEVANT TO  
NORTHERN VALLEY'S MOTION, AND IN SUPPORT OF  
ITS MOTION FOR SUMMARY JUDGMENT**

In opposition to Northern Valley's motion, and in support of its own motion for summary judgment, Sprint hereby states the following additional facts:

201. The Commission has ordered that this case is limited to traffic that was billed on or before August 1, 2011. Order Approving Procedural Schedule, p. 4 (Sept. 28, 2011).

**A. SPRINT'S DISCOVERY OF TRAFFIC PUMPING SCHEMES**

202. Sprint became aware of traffic pumping in late 2006 when Regina Roach received a call from an employee in Sprint's Fraud Department. The employee was investigating suspicious traffic for a carrier in Iowa and asked Ms. Roach 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. Roach Aff. ¶ 3.

203. Over the next several years, Sprint came to find many other similar traffic pumping schemes, operating mainly in Iowa and South Dakota. In Sprint's 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 IXC's 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. Roach Aff. ¶ 4.

204. 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 IXC's 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 IXC's 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 IXC's 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. Roach Aff. ¶ 5.

205. 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. Roach Aff. ¶ 6.

206. Sprint decided that when it 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. Roach Aff. ¶ 7.

**B. SPRINT'S DISCOVERY OF NORTHERN VALLEY'S TRAFFIC PUMPING SCHEME**

207. 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]. Sprint 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. Roach Aff. ¶ 8.

208. Even Northern Valley appears to have been astonished by the way in which this business exploded. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

209. Sprint filed its initial dispute in September of 2007. At that time Sprint disputed [BEGIN CONFIDENTIAL] [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. Roach Aff. ¶ 9. 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. Roach Aff. ¶ 9.

210. Sprint applied its account payable debit balance mechanism as it had done with SDN. After reducing the billed 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. Roach Aff. ¶ 10.

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

212. 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. See Roach Aff. ¶ 12.

213. At present, the amount Sprint has withheld for non-pumped traffic is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. See Roach Aff. ¶ 13 and Ex. A.

**C. NORTHERN VALLEY’S TRAFFIC PUMPING SCHEME AT THE TIME OF THE DISPUTE**

214. As it turns out, at the time that Sprint began disputing Northern Valley's bills Northern Valley was involved in all of the kinds of bad behavior that Sprint and other IXC's had come to be on the lookout for.

**[BEGIN CONFIDENTIAL]**

[illegible]

## D. THE FEDERAL COURT LITIGATION

224. Sprint denied the allegations and pled affirmative defenses of unjust enrichment, unclean hands, and excuse. Sprint's Ex. 132. Sprint also asserted counterclaims for judgment against Northern Valley for the amounts it had been overbilled for prior periods, and for breach of tariff, negligent misrepresentation, unjust enrichment, and civil conspiracy. Sprint's Ex. 132.

226. That case was stayed on March 15, 2010 on primary jurisdiction grounds.

Sprint's Exs. 134 and 135.

227. The Commission has already recognized that the court's stay did not refer any issues to the Commission. *See* Order Granting Motions to Dismiss Cross-Claims (Sept. 15, 2011).

228. Northern Valley filed a second lawsuit against Sprint in April of 2011. The court stayed that case by Order dated March 23, 2012. Sprint's Ex. 136.

**E. NORTHERN VALLEY'S FURTHER ATTEMPTS TO MAKE THESE ARRANGEMENTS APPEAR LEGITIMATE**

229. In July 2010 Northern Valley filed a new federal access tariff that attempted to redefine the term “end user” in a way that would bring calls to CCCs within the scope of tariff. *In the Matter of Qwest Commc’ns Co., LLC v. Northern Valley Commc’ns, LLC*, FCC 11-87, 26 F.C.C.R. 8332, 2011 WL 2258081, ¶ 4 (2011) (“*Qwest/Northern Valley Tariff Order*”) (Sprint’s Ex. 140). The FCC not only rejected the Northern Valley tariff, it found Northern Valley violated 47 U.S.C. § 201(b) by attempting to subvert the FCC’s access charge rules. *Id.* ¶ 2.

230. [BEGIN CONFIDENTIAL]

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\_\_\_\_\_

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

**F. NORTHERN VALLEY DID NOT PROVIDE LOCAL EXCHANGE SERVICE TO CCCS**

233. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

**G. NORTHERN VALLEY'S CCCS WERE NOT LEGITIMATE END USER CUSTOMERS, BUT WERE INSTEAD MORE LIKE BUSINESS PARTNERS.**

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

**H. CCCS ARE NOT END USERS WITH PREMISES**

246. All of the CCC's equipment is and has been located in Northern Valley or James Valley central office facilities. Sprint's Ex. 102, NV's Supp. Response to IR 6, p. 12.



247. Global Conference (for a period of time) and A+/One Rate (until 2011) were parties to contracts that did not require them to pay for collocation services. *See* Sprint's Response to NV's SOF 43.

248. All CCC contracts that have required CCCs to “pay” for collocation services have been sham agreements. *See* Sprint’s Response to NV’s SOF 43.

249. Sang neither owns nor leases any real estate in South Dakota. Sprint's Ex. 109, Alpert Dep., p. 31.

## I. NORTHERN VALLEY IS JUST LIKE FARMERS

**A. CCCs Received Services Different From Those Received by Traditional Local Customers**

**[BEGIN CONFIDENTIAL]**

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5

\_\_\_\_\_

1. **Introduction**

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]









[END CONFIDENTIAL]

Dated: August 31, 2012

**BRIGGS AND MORGAN, P.A.**

By /s/ Philip R. Schenkenberg

Philip R. Schenkenberg  
80 South Eighth Street  
2200 IDS Center  
Minneapolis, MN 55402  
612.977.8400

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

**ATTORNEYS FOR SPRINT  
COMMUNICATIONS COMPANY L.P.**