

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

In the Matter of)	
the Filing by)	
Northern Valley Communications, LLC)	TC19-052
for Approval of Revisions)	
to Its Access Service Tariff No. 1)	

PETITION TO INTERVENE

AT&T Corp. (AT&T) hereby petitions the Commission for intervention pursuant A.R.S.D. 20:10:01:15.02 of the Commission's rules into any proceeding the Commission opens to consider the tariff revisions sought by Northern Valley Communications, L.L.C. ("Northern Valley"). Alternatively, AT&T requests that the Commission either reject the proposed revisions or suspend the effective date of such revisions until the completion of the FCC's investigation of the analogous revisions to Northern Valley's interstate tariff.

1. On December 27, 2019, Northern Valley, through its agent, GVNW Consulting, Inc., filed revisions to its Tariff No. 1, which sets forth the rates and conditions for its provision of intrastate Switched Access Services.¹

2. AT&T Corp. is an interexchange carrier ("IXC") that routinely purchases intrastate Switched Access services from Northern Valley to facilitate the origination and termination of calls placed by AT&T's long distance and mobility customers to and from the NPA-NXXs of Northern Valley's customers. Thus, AT&T's interest are distinct from the public at large and the outcome of this proceeding will impact AT&T directly.

¹ Although Northern Valley's filing included an effective date of on January 11, 2020, the Commission asked that interventions be filed by January 17, 2020.

3. On September 26, 2019, the FCC issued its *Report and Order and Modification of Section 214 Authorizations* in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*. (“Access Arbitrage Order”) ² In this Order, the FCC addressed the long-standing issue of access stimulation (sometimes referred to as ‘traffic pumping’), a practice that the Commission had long ago determined were “wasteful” and “harmful” and should thus be “curtailed.”³ As a result, the FCC determined it was necessary to take steps to broaden the scope and effectiveness of its previously adopted anti-arbitrage rules, including shifting the financial responsibility for the tandem switching and transport access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC end office.

4. Northern Valley is a South Dakota CLEC that, by its own admission, is engaged in access stimulation. Since its identification as an access stimulator, IXCs have delivered access stimulation traffic to Northern Valley via the South Dakota Network (“SDN”) tandem switch in Sioux Falls. SDN has billed IXC for tandem switching, and Northern Valley has billed IXCs approximately 190 miles of transport from Sioux Falls to its switch in Redfield. Under the requirements of the Order, the responsibility for the tandem switch and transport would shift from the IXCs to Northern Valley.

5. Through the proposed revisions to its intrastate tariff, Northern Valley now seeks to require IXCs change this long-standing routing arrangement, and instead deliver traffic to a newly established tandem in Groton, at the existing switch owned by Northern Valley’s ILEC affiliate James Valley Cooperative Telephone Company, thereby imposing the costs of transport between the IXCs existing points of presence (“POP”) in close proximity to SDN’s

² A copy of the Order is attached as **Exhibit 1**.

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, ¶ 9 (2011) (“Transformation Order”), *aff’d*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) at ¶¶ 648-66,

tandem switch, to a new location more than 140 miles from away. This action is a clear end run around both the terms and intent of the FCC's Access Stimulation Order.

6. Northern Valley has also filed comparable revisions to its interstate tariff. However, on January 10, 2020, the FCC issued an Order in which it opened an investigation of "the question of whether Northern Valley's proposed revisions comply with the Commission's Access Arbitrage Order, the Communications Act of 1934, as amended (Act), and the Commission's rules."⁴

7. Given these circumstances, AT&T believes that it would be imprudent to allow Northern Valley's proposed revisions to become effective during the pendency of the FCC's investigation into Northern Valley's comparable interstate tariff revisions. Although this Commission could "enter upon a hearing concerning the propriety or reasonableness of the rate, price or practice"⁵ set forth in the Northern Valley's revisions to its intrastate tariff, such a hearing is likely to be duplicative of the FCC investigation.

For the reasons stated herein, the Commission should reject or suspend the effective date of Northern Valley's tariff revisions. Alternatively, AT&T requests that the Commission set a hearing to review those revisions and grant AT&T's request for intervention.

Respectfully submitted.

By: 

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⁴ *In the Matter of Northern Valley Communications, L.L.C.*, Tariff F.C.C. No. 3, WC Docket No. 20-11, Transmittal No. 12. (attached as **Exhibit 2**).

⁵ Rule 20:10:01:15.02.

Certificate of Service

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