

**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	)	

**NORTHERN VALLEY COMMUNICATIONS, LLC'S  
OPPOSITION TO AT&T'S AND SPRINT'S PETITIONS TO SUSPEND TARIFF**

**EXHIBIT A**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of ) WC Docket No. 20-11
Northern Valley Communications, LLC ) Transmittal No. 12
Tariff F.C.C. No. 3 )

ORDER

Adopted: January 10, 2020

Released: January 10, 2020

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On December 27, 2019, Northern Valley Communications, LLC (Northern Valley) filed Transmittal No. 12 proposing revisions to its interstate access service Tariff F.C.C. No. 3 "to include language to support 47 C.F.R. §51.914 with regards to Access Stimulation." The proposed revisions are scheduled to become effective on January 11, 2020. Because we conclude that substantial questions of lawfulness exist regarding Northern Valley's proposed tariff revisions, we suspend the proposed revisions for one day and set for investigation 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.

II. BACKGROUND

2. Northern Valley is an access-stimulating competitive local exchange carrier (LEC). Pursuant to the rules adopted in the Access Arbitrage Order, Northern Valley must submit tariff revisions to "designate the Intermediate Access Provider(s) that will provide the terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in access stimulation and that it shall pay for those services . . . ."

3. Northern Valley submitted proposed tariff revisions designating its incumbent LEC affiliate, James Valley Cooperative Telephone Company (James Valley), as its new Intermediate Access Provider (tandem provider) and accepting financial responsibility for the charges between James Valley's access tandem switch in Groton, South Dakota, and Northern Valley's terminating end office or equivalent.

1 Letter from Steve Gatto, Authorized Representative for Northern Valley Communications, LLC, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 12, WC Docket No. 20-11 (filed Dec. 27, 2019) (Transmittal Letter).

2 See Transmittal Letter.

3 Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, FCC 19-94 (Sept. 27, 2019) (Access Arbitrage Order or Order).

4 Reply of Northern Valley Communications, LLC to Petitions to Reject or Suspend and Investigate Northern Valley Communications, LLC's Tariff FCC No. 3, Transmittal No. 12, WC Docket No. 20-11, at 1 (filed Jan. 7, 2020) (Northern Valley Reply); 47 CFR § 61.3(bbb).

5 47 CFR § 51.914(b)(2).

6 Petition of Sprint to Reject or to Suspend and Investigate Northern Valley Communications, LLC's, Tariff, WC Docket No. 20-11, Attach. A (filed Jan. 3, 2020) (Sprint Petition).

4. On January 3, 2020, Verizon and Sprint (Petitioners) filed petitions asking the Commission to reject, or to suspend and investigate, the proposed Northern Valley tariff revisions.<sup>7</sup> Northern Valley filed a reply to the petitions on January 7, 2020, requesting that the petitions be denied.<sup>8</sup>

### III. DISCUSSION

5. We find that there are substantial questions regarding the lawfulness of Northern Valley's proposed tariff revisions that require further investigation. The Petitioners identify concerns about whether the proposed tariff revisions comply with the *Access Arbitrage Order*, the rules the Commission adopted in that *Order*, and the Act.<sup>9</sup> Specifically, the Petitioners challenge Northern Valley's unilateral decision to rehome to a different tandem and its proposed tariff revisions providing that Northern Valley "shall assume financial responsibility *only* for" James Valley's charges.<sup>10</sup> Petitioners argue that Northern Valley is trying to use its proposed tariff revisions to circumvent the *Access Arbitrage Order* and the Commission's rules.<sup>11</sup>

6. We find that Petitioners have raised substantial questions of lawfulness regarding Northern Valley's proposed tariff revisions that require further investigation. Accordingly, we suspend those proposed revisions for one day, impose an accounting order, and initiate an investigation into the lawfulness of the proposed revisions.<sup>12</sup> We will identify the specific issues that are the subject of the investigation in an upcoming designation order and may include, but not be limited to, the issues identified in this Order. We may also, by order, identify discrete issues that warrant further investigation.

### IV. *EX PARTE* REQUIREMENTS

7. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>13</sup> Persons making *ex parte* presentations must file in WC Docket No. 20-11 a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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<sup>7</sup> Sprint Petition; Verizon Petition to Reject or, in the Alternative, Suspend and Investigate, WC Docket No. 20-11 (filed Jan. 3, 2020) (Verizon Petition).

<sup>8</sup> Northern Valley Reply.

<sup>9</sup> Sprint Petition at 1-2; Verizon Petition at 3-4.

<sup>10</sup> Northern Valley Tariff F.C.C. No. 3, 1st Rev. Page No. 46.1, § 7.2.2 (emphasis added).

<sup>11</sup> See Sprint Petition at 1; Verizon Petition at 3.

<sup>12</sup> 47 U.S.C. § 204.

<sup>13</sup> 47 CFR §§ 1.1200 *et seq.*

**V. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the effective date of the switched access rate and charge revisions of Northern Valley Communications, LLC Tariff F.C.C. No. 3 contained in Transmittal No. 12 IS advanced for one day to January 10, 2020, and then SUSPENDED for one day until January 11, 2020, and an investigation IS INSTITUTED.

9. IT IS FURTHER ORDERED that Northern Valley Communications, LLC SHALL FILE a supplement within five business days from the release date of this Order reflecting this suspension. Northern Valley Communications, LLC should cite the "DA" number on the instant Order as the authority for its filing.

10. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, Northern Valley Communications, LLC SHALL KEEP ACCURATE ACCOUNT of all amounts received and paid that are associated with the switched access service rates and charges that are subject to this investigation.

11. IT IS FURTHER ORDERED that the Verizon Petition to Reject or, in the Alternative, Suspend and Investigate and the Petition of Sprint to Reject or to Suspend and Investigate Northern Valley Communications, LLC's, Tariff are GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel  
Chief, Pricing Policy Division  
Wireline Competition Bureau