

**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
MOTION TO WITHDRAW TARIFF REVISIONS AND APPROVE REFUND**

Northern Valley Communications, LLC (“Northern Valley”) moves the South Dakota Public Utilities Commission (“PUC” or “Commission”) for an Order allowing it to withdraw the tariff revisions filed in this docket, approve its proposed refund and close this docket.

I. Background

On December 27, 2019, Northern Valley filed in this docket revisions to its Intrastate Access Tariff No. 1 that were made in response to the FCC’s *Access Stimulation Order*.¹

The revisions to the tariff provided that, effective January 11, 2020, Northern Valley would no longer home to the centralized equal access tandem switch of South Dakota Network, LLC in Sioux Falls, South Dakota, but instead home to the tandem switch of its parent company, James Valley Cooperative Telephone Company in Groton, South Dakota, as “its intermediate Access Provider for terminating Feature Group D Interexchange traffic pursuant to 47 C.F.R. § 51.914(b)(2).”² The tariff revisions did not change any intrastate rates then in effect.

¹ *In re Updating the Inter-carrier Comp. Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, FCC 19-94, 2019 WL 4785554, Rep. & Order and Modification of Section 214 Authorizations (rel. Sept. 27, 2019) (“*Access Stimulation Order*”).

² The revised tariff further stated that, in compliance with the *Access Stimulation Order*, “Northern Valley will not bill any Interexchange Carrier for terminating switched access tandem switching or terminating switched access transport charges for any Feature Group D Interexchange traffic between the James Valley access tandem switch and Northern Valley’s end office. Further, Northern Valley shall assume financial responsibility only for the designated Intermediate Access Provider’s charges for

The revisions to its intrastate tariff mirrored the revisions made by Northern Valley to its interstate tariff filed on December 27, 2019 with the FCC pursuant to its FCC Tariff No. 3 Tariff Transmittal No. 12 to comply with the new rules adopted by the FCC in the *Access Stimulation Order*. On January 10, 2020, the FCC entered an Order suspending Northern Valley's proposed revisions for one day, thus depriving the tariff revisions of "deemed lawful" status but otherwise allowed it to become effective.³

Following the lead of the FCC, Sprint and AT&T on January 17, 2020, filed a Petition to Intervene in this docket requesting suspension of Northern Valley's intrastate tariff. On January 31, 2020, Northern Valley, Sprint, and AT&T submitted a Joint Statement by which Northern Valley did not oppose the intervention of Sprint and AT&T and the parties extended Northern Valley's response deadline to February 12, 2020, and Sprint's and AT&T's reply deadline to February 24, 2020. On February 6, 2020, the PUC issued an Order granting intervention to Sprint and AT&T and affirming the extension agreed to by the parties.

On March 8, 2020 Northern Valley, Sprint, AT&T and Staff filed a Stipulation in this docket that the Commission stay this proceeding and leave the docket open pending a final determination by the FCC in the Northern Valley Matter. On March 9, 2020, the Commission entered its Order approving the Stipulation to Stay the Proceedings.

On June 11, 2020, the FCC released its Order in the Northern Valley Matter holding that Northern Valley's decision to cease using the SDN tandem and to designate the Groton tandem

terminating Feature Group D interexchange traffic between the James Valley access tandem switch and Northern Valley's end office."

³ See *In re N. Valley Commc'ns, LLC Tariff F.C.C. No. 3*, WC Docket No. 20-11, Transmittal No. 12, Order (rel. Jan. 10, 2020) ("*Northern Valley Matter*").

pursuant to its FCC Tariff No. 3 Transmittal No. 12 was “unjust and unreasonable.”⁴ Northern Valley took three actions with respect to the Order:

- It appealed this Order to the DC Circuit Court of Appeals⁵;
- On July 10, 2020, it filed a revised FCC Tariff to designate Wide Voice as its tandem provider located in Sioux Falls - Tariff F.C.C. No. 3, Transmittal No. 14 which become effective on July 25, 2020.
- On May 31, 2020 it stopped charging carriers under the revisions to its Intrastate Access Tariff No. 1 filed in this docket.

While the *Federal Tariff Appeal* was pending, Northern Valley filed revisions to its intrastate tariff in TC21-034 to mirror the revisions in its Tariff F.C.C. No. 3, Transmittal No. 14. This revision was approved by the PUC by Order dated July 7, 2021.

Following further proceedings before the FCC in the *Northern Valley Matter*, including entry of and payment pursuant to the August 18, 2022 *Refund Order*⁶, Northern Valley and the FCC filed on October 14, 2022 a Joint Stipulation to dismiss the *Federal Tariff Appeal*.

Therefore, Northern Valley's interstate tariff is fully resolved and the intrastate tariff (pursuant to the revisions filed in TC21-034) mirrors the interstate tariff.

II. Withdrawal of Tariff Revisions

Northern Valley only implemented the revisions to its intrastate tariff filed in this docket from January 11, 2020 to May 31, 2020. Because those revisions were replaced by the tariff

⁴ *In the Matter of N. Valley Commc'ns, LLC, Tariff F.C.C. No. 3, No. 12*, 2020 WL 3166245 (“*Northern Valley Matter*”)

⁵ *Northern Valley Communications, LLC v. Federal Communications Commission and the United States of America*, No. 20-1287. (“*Federal Tariff Appeal*”)

⁶ *Memorandum Opinion and Order In the Matter of N. Valley Commc'ns, LLC, Tariff F.C.C. No. 3, No. 12*, WC Docket No. 20-11 (“*Refund Order*”)

revisions approved in TC21-034 and because Northern Valley proposes to refund the access charges billed and received during the time it implemented the revisions filed in this docket, Northern Valley proposes to withdraw these revisions.

III. Refund

Attached as **Exhibit 1** are the access charges billed and received by Northern Valley under the revisions to its tariff filed in this docket and implemented from January 11, 2020 to May 31, 2020.⁷ These are the amounts, plus 7% interest, that Northern Valley proposes to refund by crediting the respective carriers on their first billing invoice following approval of this Motion.

IV. Conclusion

Northern Valley requests the Commission enter an Order allowing Northern Valley to withdraw the Tariff revisions filed in this docket, approve the refund proposal and close this docket.

Northern Valley Communications, LLC

Dated: November 4, 2022

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⁷ AT&T is not included in the refund calculation because Northern Valley and AT&T entered into a separate Settlement Agreement that resolved interstate and intrastate charges.