

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY)	TC19-052
NORTHERN VALLEY COMMUNICATIONS,)	
LLC FOR APPROVAL OF REVISIONS TO ITS)	SPRINT'S BRIEF IN SUPPORT
ACCESS SERVICE TARRIF NO. 1)	OF SUSPENDING TARIFF
)	PENDING HEARING

COMES NOW, Sprint Communications Company L.P., (“Sprint”) by and through its attorney, Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, and submits its Brief in Support of Suspending Tariff Pending Hearing.

This matter comes before the Commission on Northern Valley Communications, LLC (Northern Valley) filing for a change in its tariff. Northern Valley’s proposed tariff changes mirrors an interstate tariff filing with the Federal Communications Commission (FCC). The FCC has currently dealt with the interstate tariff by suspending the tariff for one day and then allowing it to go forward subject to a requirement that records are kept of payments for the possibility of refund as the Commission determines the legality of the interstate tariff.¹ The FCC specifically found that the tariff as submitted presented “substantial questions regarding the lawfulness of Northern Valley’s proposed tariff revisions that require further investigation”.²

Upon Northern Valley filing the tariff with this Commission, AT&T and Sprint filed requests for interventions. Pursuant to a stipulation between the intervenors and Northern Valley, the Commission allowed the interventions and set the question of suspension of the tariff for briefing. In this filing, Sprint joins in the brief submitted by AT&T opposing the state tariff filed by Northern Valley and to provide further background and argument.

¹ 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 Order*”).

² *Id.* at ¶ 5.

BACKGROUND SUMMARY

Northern Valley, a company well known as a traffic pumper, has filed a tariff revision and network routing change to circumvent the FCC's order enacted last September to combat access arbitrage, also known as traffic pumping.³ In the Access Arbitrage Order the FCC sought to prevent traffic pumping companies from imposing access charges on inter-exchange carriers for access-stimulation traffic. In an effort to continue its traffic pumping scheme, Northern Valley now seeks to change its decades old traffic pattern by designating its affiliated ILEC's distant and expensive-to-reach tandem as the new traffic exchange point rather than the long time established route through South Dakota Network's (SDN) tandem. This new proposed routing scheme relieves Northern Valley of the financial obligation for tandem switch and transport from the current route as required by the Access Arbitrage Order while creating a bottleneck route through the affiliate ILEC to reach Northern Valley's access stimulation customers so as to charge IXCs and wireless carriers to reach Northern Valley's access stimulation customers.

In mid-December 2019, Sprint personnel noticed that Northern Valley entered a routing change in the industry Local Exchange Routing Guide ("LERG"). Northern Valley's LERG entry stated that, effective January 10, 2020, the tandem connections to Northern Valley's Redfield end office switch ("RDFDSDAHR0") and its Aberdeen end office switch ("ABRDSH01RL0"), apparently as remotes via the Groton end office switch ("GRTNSDXADS0"), would change from the existing South Dakota Network tandem ("SXFLSDCH01T") in Sioux Falls, South Dakota, to a new Groton tandem ("GRTNSD0500T") owned by the Northern Valley ILEC-affiliate James Valley. As far as Sprint has been able to determine, *only* the Northern Valley Aberdeen and Redfield NPA-NXXs are to be served via the

³ *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WD Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations (released Sept. 27, 2019) ("Access Arbitrage Order").

new Groton Tandem. The SDN Sioux Falls tandem continues to be identified as the tandem for the James Valley Groton end office NPA-NXXs. The end result is that James Valley and Northern Valley have simply inserted a new tandem in a remote location for the sole purpose of shifting transport costs associated with pumped traffic back to the interexchange carriers that deliver such traffic to Northern Valley NPA-NXXs.

In response to a Sprint inquiry regarding the Northern Valley LERG entry, Northern Valley then provided a Tandem Rehome notice on December 20, 2019.⁴ The notice: (1) identifies the stated tandem re-homing change from Sioux Falls to Groton; (2) states Northern Valley “anticipates disconnecting the SDN tandem”; and (3) “[a]s of January 11th, 2020 it will be your company’s financial responsibility to transport your traffic to Northern Valley’s designated tandem switch in Groton, South Dakota.” Northern Valley ignores the fact the change imposes a transport distance on carriers of approximately 128 miles. In furtherance of its effort to subvert the FCC’s intent and avoid the Sioux Falls to Aberdeen and Redfield transport charges it would otherwise have to pay under the Access Arbitrage Order, on December 27, 2019, Northern Valley filed a revision to its federal tariff and state tariff that designates James Valley as its Intermediate Access Provider for terminating IXC traffic.

The change has the exact opposite effect of the clear language and intent of the FCC’s Access Arbitrage Order that sought to end access stimulation by correctly assigning the costs of access stimulation to the access stimulators rather than applying those costs to carriers that deliver the traffic. Here, Northern Valley attempts to improperly shift its costs to IXCs. The order requires access stimulators to pay for tandem switching and transport. However, given that Northern Valley is an affiliate of James Valley, there are effectively no tandem switching or tandem transport charges, so no expense to the access stimulating LEC, Northern Valley, or to

⁴ Northern Valley Communications, L.L.C. – Tandem Rehome document, attached as Exhibit A.

the access stimulating service. The change intends to inject a new revenue stream into the affiliated companies: transport from the previous exchange point in Sioux Falls to James Valley's tandem in Groton with an additional 128 miles of transport costs. This imposes additional costs on Sprint and other wireless carriers and IXCs because the costs are supposed to be borne by the access stimulating LEC. Even if the cost of the new arrangement is cheaper than the existing tandem switching and transport charges, it still exceeds the no cost requirement in the Access Simulation Order.

In response to these filings, Sprint filed an opposition with the FCC to the federal filing. In the state matter, Sprint moved for intervention and the intervention was granted pursuant to stipulation of the parties. At the federal level, the FCC acted by suspending for one day the tariff so it would not be deemed lawful status and opened an investigation. Pending before this Commission is the question of whether to continue suspension of this tariff pending hearing.

I. Standard for Approval of Tariff Change.

In this situation, SDCL 49-31-12.4 controls the procedures to be followed by the Commission regarding a change to an existing tariff. The statute applies to a filing that would change a price in a tariff or create "any new practice effecting any non-competitive telecommunications service". The statute provides the Commission may suspend the operation of the tariff for the practice for up to 120 days immediately and extend this period for an additional 60 days if it so desires.⁵ If the proceeding goes beyond 180 days the rate may go into effect but the company receiving payment based on the tariff must keep an accurate account of all amounts received and may be required to refund with interest said amounts.⁶ It is on the

⁵ See SDCL 49-31-12.4(2).

⁶ See SDCL 49-31-12.4(5)

company requesting the change of the tariff the burden to prove the change of tariff “is fair and reasonable”.⁷

II. Legal Analysis.

Sprint joins in AT&T’s brief in response and the analysis set forth therein concerning the inappropriateness of Northern Valley’s actions given the FCC’s order. In addition, Sprint opposes Northern Valley’s filing as why Northern Valley’s Brief in Opposition to Suspension has asserted revisions are “fair and reasonable” pursuant to state law, Northern Valley’s analysis is flawed.

Northern Valley essentially argues in its brief that its revisions are fair and reasonable because it can construe the FCC’s order as allowing such activity.⁸ Northern Valley essentially argues that because Northern Valley concludes its activities are legal under the FCC’s order that it is fair and reasonable under state law to make this tariff change. This does not make the burden required of Northern Valley under state law.

First, it is clear that the FCC has questions regarding whether Northern Valley’s federal filed tariff is lawful.⁹ Given that the FCC has set the tariff for investigation and will be issuing an order identifying the issues, what is really occurring here is Northern Valley is arguing that it has met its burden showing the state tariff is fair and reasonable because it may prevail in front of the FCC on its tariff.

One can imagine that if this Commission would have a finding that the fact that Northern Valley has a tariff in effect on the federal level qualifies as making the state tariff fair and reasonable and Northern Valley will turn around and argue to the FCC that the FCC has to allow

⁷ See SDCL 49-31-12.4(3).

⁸ See *Northern Valley Communication, LLC’s Opposition to AT&T’s and Sprint’s Petitions to Suspend Tariff* dated February 12, 2020 pages 6-8.

⁹ 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) at ¶ 5 stating presented “substantial questions regarding the lawfulness of Northern Valley’s proposed tariff revisions that require further investigation”.

the federal tariff to remain in place because the state has deemed the state tariff is fair and reasonable.

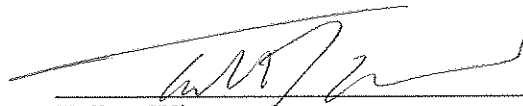
This Commission should suspend the state tariff and move towards hearing. While Sprint, like AT&T, notes the duplicity of these proceedings, state law provides the extra protection wherein the commission has the ability to suspend the operation of the tariff for the first 180 days and then if a final decision has not been reached Northern Valley can implement the tariff subject to keeping records and refunding the amount collected.¹⁰

CONCLUSION

For the reasons set forth above, the Commission should suspend the tariff for 180 days and move towards hearing with the realization that if the FCC rules prior to that it may resolve the need for a state hearing.

Dated: February 24, 2020.

**ATTORNEYS FOR SPRINT
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¹⁰ See SDCL 49-31-12.4(5).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Brief in Support of Suspending Tariff Pending Hearing (Docket TC19-052) was delivered by electronic mail this 24th day of February, 2020, to the following:

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/s/ Talbot J. Wieczorek
Talbot J. Wieczorek



**EXHIBIT
A**

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Aberdeen, SD 57401

1/11/20
1/11/20
1/11/20

**NORTHERN VALLEY COMMUNICATIONS, LLC – TANDEM REHOME
IMMEDIATE ATTENTION REQUIRED**

Northern Valley Communications, LLC will be rehomeing its FGD tandem from South Dakota Network, LLC's (SXFLSDCH01T) to James Valley Cooperative Telephone Company's (GRTNSD0500T) effective –January 11, 2020. Below is the pertinent network information.

- Northern Valley Communications, LLC (CLEC – OCN 6125)
- Tandem Rehome Affected NPA/NXX/X's
 - 605-313-A, 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 (REDFIELD)
 - 605-475-A, 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 (REDFIELD)
 - 605-715-A, 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 (ABERDEEN)
 - 605-725-A, 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 (ABERDEEN)
 - 605-468-4, 5, 8 (REDFIELD)
 - 605-472-5, 9 (REDFIELD)
 - 605-622-6, 8, 9 (ABERDEEN)
- Tandem Owner – James Valley Cooperative Telephone Company (ILEC – OCN 1664)
- Tandem CLLI – GRTNSD0500T
- Tandem DPC – 2-88-85
- Tandem Address – Alley W of Main St, 206 E 2nd Ave, Groton SD 57445
- SS7 Provider – Transaction Network Services (TNS)

Additionally, please accept this letter as notice, pursuant to 47 C.F.R. § 51.914(b)(1), that Northern Valley is “a local exchange carrier engaged in Access Stimulation.” In accordance with 47 C.F.R. § 51.914(a) and 47 C.F.R. § 51.914(b)(2), Northern Valley will not bill your company for terminating switched access tandem switching or terminating switched access transport charges for any traffic between the James Valley access tandem switch in Groton, South Dakota and Northern Valley's end offices. Northern Valley designates James Valley Cooperative Telephone Company as the Intermediate Access Provider that will provide terminating switched access tandem switching. Northern Valley and James Valley will jointly provide the terminating switched access transport services between James Valley's tandem switch and Northern Valley's end office switch or equivalent. Northern Valley will pay for the foregoing services as of January 11, 2020.

Northern Valley anticipates that, to the extent you currently utilize it, your company will undertake to transition its traffic off of the current transport route between Sioux Falls and Groton and to arrange for other transport facilities as necessary to prevent the disruption of services. Northern Valley anticipates disconnecting the SDN terminating tandem



**EXHIBIT
A**

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circuits after the re-homing arrangement has taken effect and carriers have had a reasonable opportunity to transition their traffic. As of January 11th, 2020 it will be your company's financial responsibility to transport your traffic to Northern Valley's designated tandem switch in Groton, South Dakota.

This network change will affect the way Northern Valley receives traffic from your company so it is imperative that you contact Northern Valley's Network Operations Manager, Cody Hanten (cody.hanten@corp.nvc.net or (605) 397-1112) immediately if you have any questions or would like to establish direct trunks to the new tandem.

Should you have any questions regarding this matter, please do not hesitate to contact me at james.groft@corp.nvc.net or (605) 725-1054.

Sincerely,

A handwritten signature in cursive script that reads "James Groft".

James Groft, CEO
Northern Valley Communications