

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Northern Valley Communications, LLC	)	Transmittal No. 12
Tariff FCC No. 3	)	
	)	

**VERIZON<sup>1</sup> PETITION TO REJECT OR, IN THE ALTERNATIVE,  
SUSPEND AND INVESTIGATE**

Pursuant to Section 1.773 of the Commission’s rules,<sup>2</sup> Verizon hereby petitions the Commission to reject or, in the alternative, suspend and investigate the above-captioned transmittal filed by Northern Valley Communications, LLC (“Northern Valley”) on December 27, 2019.

Northern Valley is a South Dakota CLEC that has engaged in access stimulation for many years.<sup>3</sup> During that time, IXC’s have delivered access stimulation traffic to Northern Valley via the South Dakota Network (SDN) tandem switch in Sioux Falls. SDN has billed IXC’s for tandem switching, and Northern Valley has billed IXC’s for approximately 190 miles of transport from Sioux Falls to Northern Valley’s switch in Redfield, South Dakota. To inflate the transport mileage, Northern Valley has treated its Redfield switch as a remote office subtending

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<sup>1</sup> The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> 47 CFR § 1.773.

<sup>3</sup> 47 CFR § 61.3(bbb).

a host office in Groton, South Dakota, and has thus billed separately for the Sioux Falls-Groton and Groton-Redfield legs of the route (rather than for the shorter airline mileage from Sioux Falls to Redfield).

In Transmittal No. 12, Northern Valley proposes to amend its interstate access tariff to “include language to support 47 C.F.R § 51.914 with regards to Access Stimulation.”<sup>4</sup> Section 51.914 of the Commission’s rules, which the Commission adopted in the recent *Access Arbitrage Order*,<sup>5</sup> shifts financial responsibility for transport charges from IXC’s to the access stimulating LEC (Northern Valley, in this case). Specifically, Section 51.914 requires that an access-stimulating LEC (1) not bill any IXC for terminating transport service;<sup>6</sup> and (2) assume financial responsibility for any Intermediate Access Provider’s charges for transport service between the LEC’s end office and the associated access tandem switch.<sup>7</sup> An Intermediate Access Provider is “any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in Access Stimulation.”<sup>8</sup>

In Transmittal No. 12, Northern Valley proposes tariff language that would (1) designate James Valley Cooperative Telephone Company (“James Valley”) (the ILEC affiliate of Northern Valley) as the sole “Intermediate Access Provider” for Northern Valley;<sup>9</sup> and (2) limit Northern Valley’s financial responsibility for transport to James Valley’s charges for transport between the

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<sup>4</sup> Transmittal Letter at 1.

<sup>5</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Report and Order and Modification of Section 214 Authorization, 34 FCC Rcd 9035 (2019) (“*Access Arbitrage Order*”).

<sup>6</sup> 47 CFR § 51.914(a)(1).

<sup>7</sup> 47 CFR § 51.914(a)(2).

<sup>8</sup> 47 CFR § 61.3(ccc).

<sup>9</sup> Northern Valley Transmittal No. 12, 1<sup>st</sup> revised page no. 46.1

James Valley “access tandem” in Groton, South Dakota and Northern Valley’s Redfield switch.<sup>10</sup> Thus, under Northern Valley’s proposed tariff, Northern Valley would assume financial responsibility for only one leg of the current transport route (Groton to Redfield), while apparently making IXCs financially responsible for the other (longer) leg (from SDN’s Sioux Falls tandem to Groton).

The Commission should reject or, in the alternative, suspend and investigate Northern Valley Transmittal No. 12 because Northern Valley’s proposal to shift the access tandem to Groton and limit Northern Valley’s financial responsibility for transport to just the Groton-Redfield leg violates the *Access Arbitrage Order* and Section 51.914 of the Commission’s rules.

Northern Valley’s proposal to include in its tariff a provision that limits its financial responsibility for transport to the Groton-Redfield leg is a transparent attempt to circumvent the requirements of the *Access Arbitrage Order*. Throughout the entire history of Northern Valley’s access stimulation activity, the transport route has extended from the SDN tandem in Sioux Falls to Northern Valley’s end office in Redfield. The LERG continues to show the SDN tandem in Sioux Falls – not James Valley’s switch in Groton – as the tandem for Northern Valley. And, according to the LERG, James Valley does not even have a tandem switch in Groton, just an end office. If James Valley invents a new “tandem” in Groton, it will have done so only as part of a scheme to circumvent the requirements of the *Access Arbitrage Order*.

It is clear that the Commission’s rules require Northern Valley to assume financial responsibility for the entire transport route from Sioux Falls to the Northern Valley switch in Redfield. Because IXCs are sending access stimulation traffic to Northern Valley via SDN, SDN is an “Intermediate Access Provider” under Section 61.3(ccc) of the Commission’s rules, i.e.,

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<sup>10</sup> *Id.*

SDN “carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in Access Stimulation.”<sup>11</sup> Thus, pursuant to Section 51.314(b)(2) of the Commission’s rules,<sup>12</sup> Northern Valley is financially responsible for transport between the SDN switch in Sioux Falls and Northern Valley’s end office switch in Redfield.

Furthermore, there is nothing in the *Access Arbitrage Order* that permits an access-stimulating LEC to invent a new “tandem,” or that requires IXCs to shift access stimulation traffic to a new tandem. In the *Access Arbitrage Order*, the Commission found that the transport charges that access-stimulating LECs must pay would be easy to identify because – as in this case – “the relevant [transport] service has already been provided for years.”<sup>13</sup> Moreover, the Commission responded to AT&T’s concern that access-stimulating LECs could shift tandems by observing that AT&T had not identified “any existing legal requirements that an IXC must agree to a new point of interconnection designated by an access-stimulating LEC should the access-stimulating LEC unilaterally attempt to move the point of interconnection.”<sup>14</sup> Requiring IXCs to deliver access-stimulation traffic to a new tandem, especially in as remote a location as Groton, South Dakota, would be inconsistent with the *Access Arbitrage Order*, which aimed to reduce inefficiencies created by access-stimulating LECs that “locate equipment in remote rural areas

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<sup>11</sup> 47 CFR § 61.3(ccc).

<sup>12</sup> 47 CFR § 51.314(b)(2).

<sup>13</sup> *Access Arbitrage Order* ¶ 87 (“It is a relatively simple matter to determine the charges applicable to intermediate access service being provided by an intermediate access provider, particularly when the relevant service has already been provided for years (albeit with a different billed party).”)

<sup>14</sup> *Id.*, ¶ 34.

without a reason independent of arbitraging the current ICC system”<sup>15</sup> or “have incentives to select less efficient alternatives if doing so would lead it to benefit, whether directly or on a corporation-wide basis.”<sup>16</sup>

Even if were permissible for Northern Valley to designate James Valley as an Intermediate Access Provider, which it is not, Northern Valley would still be financially responsible for the entire transport route from Sioux Falls to Redfield. According to the LERG, James Valley itself subtends the SDN tandem in Sioux Falls. Consequently, “the point where the access-stimulating LEC directs an IXC to hand off the LEC’s traffic” – which is the point where Northern Valley’s responsibility for transport costs begins<sup>17</sup> – would still be SDN’s Sioux Falls tandem, not the new Groton tandem. The *Access Arbitrage Order* expressly contemplates that an access stimulating LEC could be responsible for the charges levied by more than one Intermediate Access Provider – in this case, both the SDN and James Valley charges.<sup>18</sup>

The Commission cannot allow Northern Valley to thumb its nose at the Commission by so transparently circumventing the *Access Arbitrage Order*’s newly-adopted transport requirements, which were aimed at finally *eliminating* the financial incentives to engage in access stimulation.<sup>19</sup> For too many years, Northern Valley and a handful of other access-stimulating LECs have harmed consumers and wasted the resources of the Commission and of

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<sup>15</sup> *Id.*, ¶ 23.

<sup>16</sup> *Id.*, ¶ 21.

<sup>17</sup> *Id.*, ¶ 20.

<sup>18</sup> *Id.*, ¶ 58 (“In adopting this definition [of Intermediate Access Provider], we recognize the Joint CLECs’ concerns that there may be more than one intermediate access provider in a call path. The use of the phrases “any entity” and “any point” is broad enough to allow for more than one intermediate access provider between the final IXC and the LEC even though we question the likelihood of this hypothetical.”)

<sup>19</sup> *Id.*, ¶ 14.

legitimate carriers that serve real customers by endlessly playing games with the intercarrier compensation system. The Commission should act now to head off the next round of disputes before they start.

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate Northern Valley Transmittal No. 12.

Respectfully submitted,

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January 3, 2020