

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**PETITION OF SPRINT TO REJECT OR TO SUSPEND AND INVESTIGATE
NORTHERN VALLEY COMMUNICATIONS, LLC's, TARIFF**

Pursuant to section 1.773 of the Commission's rules, Sprint Communications Company L.P. ("Sprint") hereby respectfully requests that the Federal Communications Commission ("FCC" or "Commission") reject or, in the alternative, suspend and investigate the revisions to the above-captioned tariff.

Northern Valley Communications, LLC ("Northern Valley") has filed a tariff revision and network routing change that is an attempt to circumvent the Commission's order enacted just three months ago to combat access arbitrage.¹ Because Northern Valley can no longer impose access charges on inter-exchange carriers for access-stimulation traffic, it has instead proposed to designate an affiliated ILEC with a distant and expensive-to-reach tandem as the new traffic exchange point rather than the currently established route through South Dakota Network's tandem. While Northern Valley states that tandem switching and transport charges will not apply for traffic delivered to its proposed designated tandem,² its proposed routing scheme would

¹ *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) ("2019 Access Arbitrage Order").

² Northern Valley Communications, LLC, Tariff F.C.C. No. 3., 1st Revised Page No. 46.1, Note 4 (effective Jan. 11, 2020).

relieve itself of the financial obligation for tandem switch and transport from the current route as required by the order. Instead, its James Valley Cooperative Telephone Company (“James Valley”) affiliate³ will serve as a bottleneck route to reach Northern Valley’s access stimulation customers and charge IXC’s and wireless carriers to reach Northern Valley’s access stimulation customers.

I. INTRODUCTION AND BACKGROUND

On September 27, 2019, the Commission released its Order intended to eliminate access-stimulating, high-volume “free-service” arbitrage schemes. An express purpose of that Order was to “attack implicit subsidies that allow high-volume calling services to be offered for free, sending incorrect pricing signals and distorting competition.”⁴

Prophetically, AT&T requested that the Commission limit an IXC’s traffic-delivery obligations for access stimulation traffic to only those tandem switches in existence as of January 1, 2019.⁵ AT&T expressed concern that a traffic-pumping LEC may re-home its end office switches from existing tandems to an affiliate’s newly created tandem switch in a remote location to shift excessive transport costs onto the IXC. Citing that AT&T did “not point to any existing legal requirement that an IXC must agree to a new point of interconnection designated by an access stimulating LEC [to] unilaterally attempt to move the point of interconnection”, the

³ “[Northern Valley Communications] was established through a joint partnership by James Valley Telecommunications (JVT) of Groton, SD and Northern Electric Cooperative of Bath, SD.” <https://nvc.net/residential/about-us/history/>. See also <https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=8220659&attachmentKey=19473125&attachmentInd=applAttach> (“Northern Valley is a wholly-owned subsidiary of James Valley Communications, Inc. (JC), which is a wholly owned subsidiary of James Valley Cooperative Telephone Company (“James Valley”).”

⁴ 2019 Access Arbitrage Order para. 33.

⁵ AT&T June 12, 2019 Ex Parte at 4.

Commission “decline[d] to address AT&T’s hypothetical concern” in the Order.⁶ Northern Valley has now taken action to do what AT&T predicted.

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 (“RDFDSDAHS0”) 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 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 provided a Tandem Rehome notice on December 20, 2019.⁷ 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.” What is unstated is the fact that the transport distance

⁶ 2019 Access Arbitrage Order, para. 34.

⁷ Northern Valley Communications, L.L.C. – Tandem Rehome document, attached as Exhibit A.

between Sioux Falls, South Dakota, and Groton, South Dakota, that James Valley and Northern Valley are attempting to impose on interexchange carriers is approximately 128 miles.

In furtherance of its effort to subvert the Commission's intent and avoid the Sioux Falls to Aberdeen and Redfield transport charges it would otherwise have to pay under the Order, on December 27, 2019, Northern Valley filed its revision to its federal 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 Commission's 2019 Access Stimulation Order. The order 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 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 2019 Access Simulation Order.

If the Commission countenances Northern Valley's and James Valley's actions, the telecommunications industry can expect a mass migration of traffic pumpers from existing locations to new tandems that are in remote locations with limited connectivity, and, in

particular, connectivity dominated by affiliated entities or entities with an agreement with the access stimulating LEC.

II. ARGUMENT

Northern Valley's tariff change violates the Act and the Commission's rules and orders in several ways. First, it is an unjust and unreasonable practice in violation of Sections 201 and 202 of the Act. Although the Commission declined to say that access stimulation is a per se violation of the Act, the Commission has invoked Sections 201 and 202 as underlying authority for regulating access stimulation.⁸ Here, Northern Valley and James Valley are taking advantage of their affiliated operations to perpetuate a traffic pumping scheme that violates the Commission's actions to eliminate arbitrage subsidies.

Second, the change is a direct violation of the Commission's recent order, in which the Commission stated: "Nothing we do today shifts arbitrage opportunities to the IXC's or to any provider; we are attacking implicit subsidies that allow high-volume calling services to be offered for free, sending incorrect pricing signals and distorting competition."⁹ Northern Valley's unlawful attempted tariff change continues to shift costs from the traffic pumpers to IXC's, wireless carriers, and their customers. The timing of this network change is not fortuitous. It explicitly coincides with the FCC's elimination of tandem switching and transport charges on IXC's and the assignment of those costs to Northern Valley itself. Northern Valley and James Valley operated together to choose a James Valley tandem for no reason other than to continue to

⁸ See 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, para. 674 (2011).

⁹ 2019 Access Arbitrage Order. para. 33.

impose costs on carriers delivering access stimulated traffic to Northern Valley's access stimulating customers.

Third, Northern Valley's attempt to use a tariff filing to impose a new routing scheme is an inappropriate use of a tariff and is designed to try to obtain "deemed lawful" status for its new traffic pumping scheme. Routing designations are done in the LERG, which has no equivalent "deemed lawful" status.

Finally, the proposed tariff change violates the Commission's network change rules. Even if the proposed rerouting scheme were appropriate, and it clearly is not, the Commission's network change rules require ILECs to file public notice of network changes that "affect the incumbent LEC's interoperability with other service providers."¹⁰ The rules require that changes with less than six months' notice, such as this change, require public notice and objection and resolution procedures under the Commission's rules.¹¹ James Valley and Northern Valley have not filed any notice as required. Additionally, the tariff challenge ignores industry standards under ATIS that require six months' notice for tandem changes of this type.¹²

III. Legal Standard

The applicable standard of review for a petition challenging a tariff filed is set forth in 47 C.F.R. § 1.773(a)(1)(ii). Sprint's petition meets the criteria for suspending Northern Valley's tariff.

First, as demonstrated above, Northern Valley's tariff fails to comply with the Act, Commission rules, and Commission orders, and is therefore unlawful.

¹⁰ 47 C.F.R. § 51.325. Although the rule applies to ILECs and the network change is filed by Northern Valley, a CLEC, the obligation applies to the new routing carrier James Valley, which is an ILEC.

¹¹ 47 C.F.R. § 51.333.

¹² ATIS-0300046 Attachment A, p. 6. (attached as Exhibit B).

Second, there will be no injury to the public. Suspension of the tariff revisions will not stop Northern Valley from providing service to the purported customers. In fact, due to Northern Valley's failure to provide required notice, the rapid change could jeopardize continued service to Northern Valley's customers.

Third, Petitioners will be irreparably injured as described above because, absent Commission action, the tariff revision will acquire deemed lawful status that Northern Valley will argue precludes future Commission review of the lawfulness of the rates, terms, and routing provisions contained within the revisions for retrospective periods.

Finally, suspension upholds the public interest because the public has a strong interest in ensuring that carriers comply with the Commission's rules. Suspending this tariff and rejecting the tariff language as described above will help ensure that carriers do not unlawfully evade the Commission's orders, rules and regulations.

For all the reasons set forth above, Sprint urges the FCC to reject Northern Valley's tariff revisions, or, in the alternative, suspend and investigate the revisions.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

/s Keith C. Buell

Keith C. Buell

Director, Government Affairs

900 Seventh Street NW, Suite 700

Washington, DC 20001

(703) 592-2560

January 3, 2020

Certificate of Service

I hereby certify that on this 3rd day of January, 2020, I caused a true and correct copy of the foregoing Petition to be served by e-mail and first-class mail to:

Steve Gatto
GVNW
Authorized Representative for Northern Valley Communications, LLC
1836 Junction Highway
Kerrville, TX 78028
sgatto@gvnw.com

Additionally, I caused a true and correct copy of the foregoing Petition to be served electronically through the Commission's Electronic Tariff Filing System.

I served the following Commission staff by e-mail:
Gil Strobel
Chief, Pricing Policy Division Wireline Competition Bureau
gil.strobel@fcc.gov
Kris Monteith
Chief, Wireline Competition Bureau
kris.monteith@fcc.gov

/s Keith C. Buell