

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

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In the Matter of)	
)	
Northern Valley Communications, LLC)	Transmittal No. 12
Tariff FCC No. 3)	
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**REPLY OF NORTHERN VALLEY COMMUNICATIONS, LLC
TO PETITIONS TO REJECT OR TO SUSPEND AND INVESTIGATE
NORTHERN VALLEY COMMUNICATIONS, LLC’S TARIFF FCC NO. 3**

Pursuant to Section 204(a)(1) of the Communications Act,¹ and Section 1.773(b)(1)(iii) of the Commission’s Rules,² Northern Valley Communications, LLC (“Northern Valley”), responds to Verizon’s³ and Sprint’s⁴ (collectively, “Petitioners”) Petitions to Reject or to Suspend and Investigate the above captioned tariff (the “Petitions”). For the reasons stated herein, Northern Valley respectfully requests that the Commission deny the Petitions.

INTRODUCTION AND SUMMARY

On December 13, 2019, Northern Valley, an access-stimulating CLEC, updated the Business Integrated Routing and Rating Database System (“BIRRDs”) to indicate in the Local Exchange Routing Guide (“LERG”) that, effective January 10, 2020, it would no longer home to the centralized equal access (“CEA”) tandem switch of South Dakota Network, LLC (“SDN”), in Sioux Falls, South Dakota, but instead would home to the tandem switch of James Valley

¹ 47 U.S.C. § 204(a)(1).

² 47 C.F.R. § 1.773(b)(1)(iii).

³ See Verizon Petition to Reject or, in the Alternative, Suspend and Investigate (filed Jan. 3, 2020) (“Verizon Petition”).

⁴ See Petition of Sprint to Reject or to Suspend and Investigate Northern Valley Communications, LLC’s, Tariff (filed Jan. 3, 2020) (“Sprint Petition”).

Cooperative Telephone Company (“James Valley”) in Groton, South Dakota.⁵ On December 20, 2019, Northern Valley provided the Interexchange Carriers with which it does business written notice of its intent to discontinue its use of the SDN CEA tandem switch and, in accordance with 47 C.F.R. § 51.914(b)(2), its election of James Valley as the Intermediate Access Provider that would provide tandem switching service for traffic being terminated to Northern Valley’s exchange.⁶ Further, Northern Valley attested to its intent to acquire and pay for the tandem switching and transport services between James Valley’s tandem switch in Groton and the applicable Northern Valley end office as of January 11, 2020.

Northern Valley filed Tariff Transmittal No. 12 to revise its FCC Tariff No. 3 to demonstrate its intent to comply with the new rules adopted by the Commission in *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Report and Order and Modification of Section 214 Authorizations, WC Docket No. 18-155, FCC 19-94, 2019 WL 4785554 (rel. Sept. 27, 2019) (“*Access Stimulation Order*” or “*Order*”). Those changes included the removal of rate elements that Northern Valley could no longer bill for as a result of the *Order*, as well as a notice of its decision to designate James Valley as its Intermediate Access Provider for terminating Feature Group D interexchange traffic pursuant to 47 C.F.R. § 51.914(b)(2). Tariff Transmittal No. 12 was filed pursuant to Section 204(a)(3) of the Act⁷ on fifteen (15) days’ notice, with an issue date of December 27, 2019, and an effective date of January 11, 2020.

⁵ See Exhibit A (screen shots from BIRRDs). Insofar as Verizon asserts that the “LERG continues to show the SDN tandem in Sioux Falls – not James Valley’s switch in Groton – as the tandem for Northern Valley,” Verizon Petition at 3, it is merely because, while BIRRDs was updated on December 13, 2019, with a January 10, 2020 effective date, these changes were not reflected in the monthly LERG update until January 2020.

⁶ See Sprint Petition at Exhibit A.

⁷ 47 U.S.C. § 204(a)(3).

The Verizon and Sprint Petitions were filed on January 3, 2020, and both ask the Commission to reject or, in the alternative, to suspend and investigate Tariff Transmittal No. 12. The central theme of both Petitions is the same. Namely, that because Northern Valley has historically been interconnected with SDN, the CEA provider in South Dakota, Northern Valley should be prohibited and prevented from designating a different tandem switch now.

Petitioners' arguments, however, are entirely erroneous and, frankly, disingenuous. They fail to acknowledge, much less discuss, the clear holding of paragraphs 106 through 108 of the *Order*, in which the Commission expressly declared that SDN's Section 214 authorization would be amended to make clear that an access-stimulating LEC no longer has any obligation to utilize SDN's CEA network for delivery of its traffic. The Commission agreed that, to "[b]reak[] the CEA monopoly' to the extent needed so that other providers can serve the access-stimulating LECs," it would "permit traffic terminating at access-stimulating LECs that subtend those CEA providers' tandems to bypass the CEA tandems."⁸ Thus, Northern Valley's Tariff Transmittal No. 12, and its decision to home to a tandem that is closer to its end offices, is fully consistent with the *Order*. As the Commission recognized, these actions will promote competition by allowing various carriers to compete to provide the transport services necessary to terminate traffic to Northern Valley.⁹

Indeed, it bears noting that, despite arguing Northern Valley should not be able to move its tandem switch from SDN's network, neither Verizon nor Sprint currently use SDN's CEA tandem switch as the primary means of routing their traffic to Northern Valley. Therefore, Petitioners raise no practical concerns about the delivery of phone calls from their end users.

⁸ See *Access Stimulation Order*, 2019 WL 4785554, at *37 ¶¶ 106-07.

⁹ See *id.* at *37 ¶¶ 106-08.

Both carriers may choose whether to deliver their calls to the tandem switch in Groton, South Dakota, or utilize an alternative provider of their choice and at their own expense.

STANDARD OF REVIEW

By its plain language, Section 1.773(a)(1)(ii) of the Commission's rules specifies the "heightened burden of proof" petitioners must meet to convince the Commission to grant petitions to suspend a tariff filed by a non-dominant carrier, such as Northern Valley.¹⁰ In full, this Section requires petitioners to meet four separate requirements:

[T]ariff filings by nondominant carriers will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows:

- (A) That there is a high probability the tariff would be found unlawful after investigation;
- (B) That the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;
- (C) That irreparable injury will result if the tariff filing is not suspended;
and
- (D) That the suspension would not otherwise be contrary to the public interest.¹¹

On its face, then, Section 1.773(a)(1)(ii) places a "demanding" burden and high hurdle on those who seek the rejection or suspension of a CLEC tariff.¹² Not only must petitioners successfully plead and meet the four requirements outlined above, but they must also do so to such a degree

¹⁰ See *In re AT&T Commc'ns Tariff* F.C.C. Nos. 7 and 9, DA 89-430, 4 FCC Rcd. 5091, 5091 ¶ 4 (1989).

¹¹ 47 C.F.R. § 1.773(a)(1)(ii) (emphasis added).

¹² *In re Qwest Commc'ns Co. v. N. Valley Commc'ns, LLC*, File No. EB-11-MD-001, Memorandum Opinion and Order, 26 FCC Rcd. 8332, 8340 ¶ 14 (2011).

that they are able to overcome the “prima facie lawful” status that such tariffs have been guaranteed under the same Section.

Consequently, for Petitioners to succeed in their rejection or suspension of Northern Valley’s recently filed tariff amendment, they must clearly establish that the tariff, once effective, will “be *patently unlawful*.”¹³ As explained more fully below, both Verizon’s and Sprint’s Petitions do not come close to meeting this very high mark. Their Petitions should be denied.

ARGUMENT

I. SPRINT’S AND VERIZON’S ARGUMENTS IGNORE THE PLAIN LANGUAGE OF THE *ORDER*

Verizon argues that Northern Valley’s decision to move its access tandem away from SDN’s CEA tandem switch in Sioux Falls to Groton, South Dakota “violates the [] *Order* and Section 51.914 of the Commission’s rules.”¹⁴ Verizon goes on to assert that Northern Valley is required to maintain SDN as its designated tandem switch and that “nothing” in the *Order* “permits” an access-stimulating LEC to designate a new tandem or “requires” an IXC to shift its traffic to a tandem designated by the access-stimulating LEC.¹⁵ Sprint similarly argues that the change in tandem is a “direct violation of the Commission’s recent order.”¹⁶

Verizon’s and Sprint’s arguments are specious. They share the fatal flaw of ignoring the plain language of the *Order*, which made it abundantly clear that access-stimulating CLECs, like Northern Valley, are free to designate the tandem switch of their choosing, and that Northern Valley was no longer required to utilize SDN’s CEA services for the delivery of tariffed

¹³ *Capital Network Sys. v. FCC*, 28 F.3d 201, 206 (D.C. Cir. 1994) (emphasis added).

¹⁴ Verizon Petition at 3.

¹⁵ *See id.* at 4.

¹⁶ Sprint Petition at 5.

interexchange traffic. The *Order* eliminated any mandatory use requirements for the CEA tandem providers in Iowa and South Dakota:

To facilitate the implementation of the rules we adopt today, we modify the section 214 authorizations for Aureon and SDN—the only CEA providers with mandatory use requirements—to **permit traffic terminating at access-stimulating LECs that subtend those CEA providers' tandems to bypass the CEA tandems**. By eliminating the mandatory use requirements, we enable IXC's to **use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses**. Eliminating the mandatory use requirements for traffic bound for access-stimulating LECs will also allow IXC's to directly connect to access-stimulating LECs where such connections are mutually negotiated and where doing so would be more efficient and cost-effective.

Historically, IXC's delivering traffic to LECs that subtended the CEA tandems were required to use Aureon's and SDN's tandems, because terminating traffic to those LECs was subject to mandatory use requirements contained in the CEA providers' section 214 authorizations. **Wide Voice suggests that we “[b]reak[] the CEA monopoly” to the extent needed so that other providers can serve the access-stimulating LECs. This Order does that. Sprint suggests that we eliminate the CEA mandatory use requirements for the termination of all traffic.** There is no evidence that doing so would be in the public interest, or even that there are other tandem switching and transport providers available to serve other LECs subtending the CEA providers. This proceeding is focused on access stimulation. We, therefore, adopt rules that are narrowly focused on access stimulation.

Aureon and SDN present seemingly opposing views. Aureon wants to continue to carry access-stimulation traffic on its CEA network because it believes the traffic volumes will drive down its rates to a point where arbitrage will not be profitable. At the outset, we note there is nothing preventing a CEA provider from voluntarily reducing its rates to keep such traffic on its network rather than completely forgoing the revenue opportunity. Unlike Aureon, **SDN wants the Commission to prohibit access-stimulating LECs from using SDN's tandem**. Because we expect that our adopted rules will effectively remedy the incentives associated with the differences in tandem switching and tandem switched transport rates between CEA providers and other intermediate access providers, we decline to prohibit access-stimulating LECs from subtending CEA providers.¹⁷

Thus, the *Access Stimulation Order* makes clear that Northern Valley, as an access-stimulating CLEC, has no continuing obligation to utilize the SDN CEA tandem switch in Sioux

¹⁷ *Access Stimulation Order*, 2019 WL 4785554, at *37 ¶¶ 106-08 (emphasis added).

Falls, South Dakota. It also makes clear that Sprint, along with SDN, was in favor of moving Northern Valley's access-stimulating traffic off of SDN's CEA network. Northern Valley is doing precisely what these carriers requested.

Finally, the *Order* makes it clear that Northern Valley, as the access-stimulating CLEC – not the IXC – is empowered to choose the tandem switch it will home to after the *Order*'s effective date. The access-stimulating LEC's power to designate the tandem switch of its choice is expressly codified in the Commission's new rules.¹⁸ The *Order* also expressly rejects AT&T's request to place limits on the access-stimulating LECs by mandating that they use only tandem switches in existence as of January 1, 2019.¹⁹ As the Commission recognizes, there are no “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.”²⁰

Thus, far from being “patently unlawful,”²¹ Northern Valley's decision to stop routing traffic through the SDN CEA tandem switch and to designate an alternative tandem switch is

¹⁸ 47 C.F.R. § 51.914(a)(2) (providing that “a local exchange carrier [] engaged in Access Stimulation . . . [s]hall designate, if needed, the Intermediate Access Provider(s) that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier”).

¹⁹ See *Access Stimulation Order*, 2019 WL 4785554, at *12 ¶ 34.

²⁰ *Id.* There is also no basis for Verizon's argument that even if Northern Valley designates a different tandem switch it would nevertheless remain financially responsible for the transport from Sioux Falls to Groton if an IXC refuses to move its point of interconnection. See Verizon Petition at 5. 47 C.F.R. § 51.914 makes clear that the access-stimulating LEC's financial responsibility is limited to providing tandem switching and transport between its end office and the “designated” Intermediate Access Provider. See 47 C.F.R. § 51.914(a)(2). Indeed, an IXC is free to choose an alternative provider not designated by the LEC or to “mutually negotiate” a direct connection to the LEC, but, in doing so, it must bear the financial responsibility for its choice. See *Access Stimulation Order*, 2019 WL 4785554, at *37 ¶ 106.

²¹ *Capital Network Sys.*, 28 F.3d at 206.

patently *lawful*; Northern Valley has complied with both the letter and the spirit of the *Access Stimulation Order*. There is no basis to suspend or reject its Tariff Transmittal No. 12.

II. SPRINT’S EFFORT TO IMPOSE NETWORK CHANGE NOTIFICATION RULES ON NORTHERN VALLEY MUST BE REJECTED

Sprint’s argument that the Commission’s network change notification rules have been violated by Northern Valley’s notice of its switch rehomings is equally flawed.²² As an initial matter, the rules are not applicable to Northern Valley. In implementing 47 U.S.C. § 251(c)(5) in 1996, the Commission made it abundantly clear that the network change notification rules are inapplicable to CLECs:

We agree with MCI and MFS that the plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs. In addition, we conclude that imposing this requirement upon competing service providers would not enhance competition or network reliability.²³

Thus, the network change notification rules have no bearing on Northern Valley’s tandem change and, therefore, have not been violated.²⁴

Equally misplaced is Sprint’s backup argument that the rules are relevant because James Valley, the carrier Northern Valley designated as its tandem switching provider, is an ILEC. As a preliminary matter, the network change notification rules are applicable only to changes that impact an ILEC’s *competitors*.²⁵ Sprint, an IXC, is not James Valley’s competitor; Northern

²² See Sprint Petition at 5.

²³ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19471 ¶ 172 (1996) (“*Local Competition Order*”).

²⁴ The assertion that Northern Valley is somehow legally bound by the ATIS guidelines has no merit. See Sprint Petition at 6. Those guidelines clearly provide that they are “recommended” time frames. They impose no legal obligations.

²⁵ See *Local Competition Order*, 11 FCC Rcd. at 19471 ¶ 171 (“Section 251(c)(5) requires that information about network changes must be disclosed if it affects competing service providers’ performance or ability to provide service.”).

Valley's designation of James Valley as its tandem provider does not impact competition in the James Valley exchanges. Obviously missing from Sprint's Petition is any support for its baseless assertion that ILECs must comply with the network change notification rules when a subtending CLEC makes a network change.

But, even if the network change notification requirements were hypothetically applicable in this situation – which they are not – Sprint's argument entirely ignores 47 U.S.C. § 251(f)(1), which provides that the requirements of 47 U.S.C. § 251(c) (which include the network change notice requirement) are inapplicable to rural LECs until: (1) they receive a bona fide request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254.²⁶ James Valley is a rural telephone company as defined in the Commission's rules,²⁷ yet Sprint has failed to demonstrate either that James Valley has received a bona fide request for interconnection or that the South Dakota Public Utilities Commission has determined that it is not unduly economically burdensome to impose network change notification requirements on James Valley, despite the fact that the burden of proof in a CLEC tariff suspension proceeding clearly lies with Sprint.²⁸ Sprint has failed to come anywhere near meeting its burden of proof in establishing that the network change notification rules are relevant to Northern Valley's tariff amendment.

²⁶ 47 U.S.C. § 251(f)(1) (“Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).”).

²⁷ See 47 C.F.R. § 51.5.

²⁸ See 47 C.F.R. § 1.773(a)(1)(ii).

III. NEITHER PETITIONER MET THEIR BURDEN WITH REGARD TO THE OTHER PRONGS REQUIRED TO SUSPEND OR REJECT A CLEC TARIFF

In addition to failing entirely to demonstrate that Northern Valley's tariff modification has a high probability of being found patently unlawful, Petitioners also fail to carry their burden with regard to the four prongs of Section 1.773(a)(1)(ii) of the Commission's rules.

Petitioners have not even endeavored to demonstrate "[t]hat the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing."²⁹ Indeed, competition in the telecommunications market as a whole will not be impacted in any material way by Northern Valley's change in its tandem switch. And, to the contrary, by moving its traffic from the SDN tandem switch, Northern Valley's actions serve only to increase competition, as IXCs will be afforded the opportunity to evaluate various transport options from service providers who can provide transit services to Groton, South Dakota. The Commission expressly recognized as much in the *Access Stimulation Order* when it expressly stated that the *Order* would "[b]reak[] the CEA monopoly' to the extent needed so that other providers can serve the access-stimulating LECs."³⁰ Northern Valley's routing change thus enhances competition, which is in the public interest.

Similarly, neither Petitioner has proffered any evidence, nor even attempted to argue, that "irreparable injury will result if the tariff filing is not suspended."³¹ As the Commission has recognized, IXCs are free to negotiate with willing transport service providers or to "mutually negotiate" a direct connection with the access-stimulating LEC.³² In fact, neither carrier relies

²⁹ 47 C.F.R. § 1.773(a)(1)(ii)(B).

³⁰ *Access Stimulation Order*, 2019 WL 4785554, at *37 ¶ 107.

³¹ 47 C.F.R. § 1.773(a)(1)(ii)(C).

³² *See Access Stimulation Order*, 2019 WL 4785554, at *37 ¶ 106.

on SDN's CEA tandem switch as the primary mode of delivering their traffic to Northern Valley anyhow. Instead, they utilize alternative providers that provide more efficient IP-enabled routing. Thus, it is self-evident that Northern Valley's discontinuance of a route that neither Petitioner uses will not – indeed, cannot – cause irreparable harm to these companies.

Finally, neither Petitioner has made any attempt to show that the suspension of Northern Valley's tariff "would not otherwise be contrary to the public interest."³³ Suspending Northern Valley's tariff, despite its full compliance with the *Order*, merely so that Verizon and Sprint can attempt to impose additional costs on Northern Valley is not in the public interest.

CONCLUSION

For the foregoing reasons, Verizon and Sprint have failed to satisfy their "heightened burden of proof" to warrant suspension or rejection of Northern Valley's Tariff Transmittal No. 12. The Petitions should be denied and the tariff allowed to become effective as scheduled.

January 7, 2020

Respectfully submitted,



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³³ 47 C.F.R. § 1.773(a)(1)(ii)(D).

EXHIBIT A

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Submit Clear Download Report as CSV (Note: Download Report size is restricted to 1000 lines)

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1	ABRDS01RL0	00	01/10/20	6125	G037	640	GRITNSD0500T/GRITNSD0500T	/	GRITNSD0500T/GRITNSD0500T	SXFLSDCH01T/SXFLSDCH01T	/	/	/	/	SXFLSDCH01T/SXFLSDCH01T	/	GRITNSDXADS0	SXFLSDCH01W	SXFLSDCH02W					
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January 2020, I caused true and correct copies of the foregoing Reply of Northern Valley Communications, LLC to Petitions to Reject or to Suspend and Investigate Northern Valley Communications, LLC's Tariff FCC No. 3 to be filed via the FCC's Electronic Tariff Filing System and served on all parties on the attached Service List via email. Because of the Commission's early closure on January 7, 2020, due to weather, and pursuant to 47 C.F.R. §§ 1.773(b)(2) and 1.4(e), I further certify that true and correct copies of the foregoing will be served via courier service on January 8, 2020.

Dated: January 7, 2020



G. David Carter

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