

EXHIBIT A

*Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. §160(c)
From Enforcement of Certain Rules for Switched Access Services and Toll
Free Database Dip Charges, WC Docket No. 16-363
Connect America Fund, WC Docket No. 10-90*



James Valley Communications Telephone Cooperative
Northern Valley Communications, LLC
August 2, 2017

- **James Valley Cooperative Telephone Company (“James Valley”)**
is a rural telephone cooperative based in Groton, South Dakota. It was a founding member of South Dakota Network, LLC, and remains a member in good standing.
- **Northern Valley Communications, L.L.C. (“Northern Valley”)**
is a CLEC that is a wholly-owned subsidiary of James Valley and began serving customers in South Dakota in 1998.

- Northern Valley began serving conference call providers in 2005.
- Northern Valley voluntarily reduced its rate below the rural CLEC benchmark to respond to IXC complaints and self-help withholding and then further reduced its rates in accordance with the Commission's *Connect America Fund Order*.

- AT&T paid the rates in Northern Valley's post-*Connect America Fund Order* before returning to self-help withholding in March 2013.
- At the same time it began withholding from Northern Valley, AT&T dramatically increased the amount of wholesale traffic it voluntarily delivered to Northern Valley.

- In September 2014, AT&T and SDN entered into a negotiated, unfiled agreement where by SDN provides tandem switching services and purports to provide tandem-switched transport to AT&T for rates not included in its tariff.
- Northern Valley has litigation against:
 - AT&T in federal court for failure to pay Northern Valley's tariffed rates
 - Against SDN in state court for, *inter alia*, breach of the SDN operating agreement and conversion of Northern Valley's leased circuits that continue to carry AT&T's traffic

- As previously described in its Motion for Summary Denial, Northern Valley and James Valley urge the Commission to deny AT&T's Petition for Forbearance because it was not complete as filed.
- AT&T does not have standing to seek relief with regard to CEA Providers and CLECs because it is not part of that class of carriers.
 - Centralized Equal Access providers require careful consideration and should not be treated just like any other ILEC. *See In re Technology Transitions, USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services, Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, Declaratory Ruling, Second Report & Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 8290, ¶ 19 & n.43 (Rel. July 15, 2016). (“*USTelecom Petition*”) (finding “incumbent LECs non-dominant in their provision of interstate switched access services,” but confirming that “non-dominant status does not extend to centralized equal access providers because such carriers do not provide service to end users”).
- AT&T has not met its burden of proof or persuasion, instead relying on unsupported assertions without appropriate evidentiary support.

Northern Valley v. AT&T Corp., Summary Judgment Order,
1:14-cv-01018 (D.S.D. March 28, 2017)

- Rejected AT&T's argument that the conference call providers were not Northern Valley's end users
- Rejected AT&T's argument that Northern Valley's tariff was not entitled to deemed lawful protection
- Rejected AT&T's argument that Northern Valley's tariff did not adequately define the transport services between SDN's tandem switch in Sioux Falls and Groton, South Dakota provided by Northern Valley

Northern Valley v. AT&T Corp., Summary Judgment Order,
1:14-cv-01018 (D.S.D. March 28, 2017)

- Rejected AT&T's argument that Northern Valley had to provide AT&T with use of its facilities to establish a direct connect at the rates contained in *CenturyLink's* tariff
- Concluded that Northern Valley was entitled to summary judgment for the period of March 2013 – September 2014 unless AT&T produces evidence that it made an unconditional offer to design, install, and implement a direct connect at its own expense (rather than requiring Northern Valley and James Valley to allow AT&T to use its facilities)

Northern Valley v. AT&T Corp., Summary Judgment Order,
1:14-cv-01018 (D.S.D. March 28, 2017)

- Concluded that AT&T was not entitled to summary judgment for the period September 2014 to present when AT&T contends that tandem-switched transport from Sioux Falls has been provided by SDN, pursuant to a negotiated agreement, rather than Northern Valley's tariff

AT&T's Ex Parte: Omissions and Misstatements

AT&T Comment (p. 5)

- ❖ Access stimulants continue to rely on inflated transport charges to replace revenues reduced by the 2011 reforms.

James Valley/Northern Valley Response

- A carrier cannot “continue to rely” on previous sources of income to “replace” revenues reduced by the *Connect America Fund Order*.
- Neither Northern Valley nor James Valley changed their transport charges or practices after *Connect America*.

AT&T's Ex Parte: Omissions and Misstatements

AT&T Comment (p. 5)

- ❖ Access stimulators continue to rely on inflated transport charges to replace revenues reduced by the 2011 reforms.

James Valley/Northern Valley Response

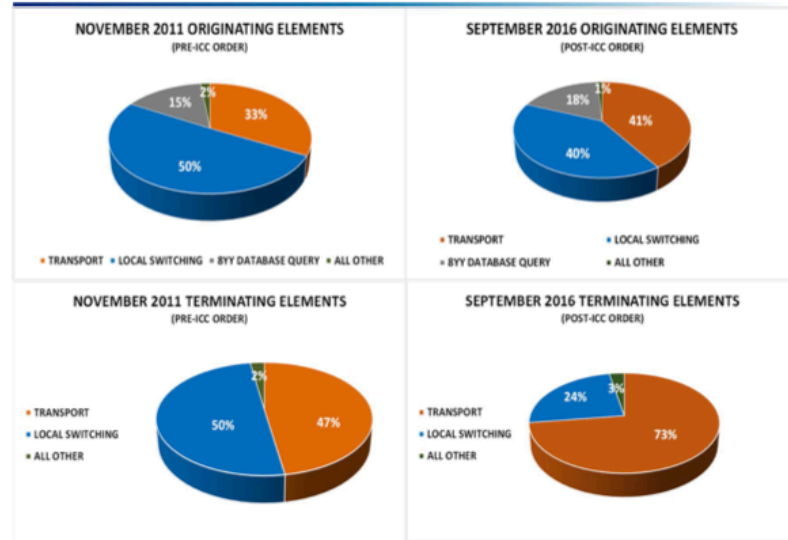
- Transport charges are not “inflated.”
- The federal court required AT&T to finally turn over revenue and cost data.
- Expert analysis revealed that from March 2013 – June 2016:
 - AT&T collected \$50 million for traffic bound to Northern Valley;
 - AT&T would have paid Northern Valley approximately \$9 million during the same time period if it had complied with the tariff.
 - AT&T had a net profit of \$30 million for this traffic;
 - \$8.2 million in revenues were generated by AT&T from *wholesale traffic* to Northern Valley alone;

See Northern Valley Communications, LLC v. AT&T Corp., 1:14-cv-01018, Motion Hearing Transcript, at 44:17-49:20 (Jan. 23, 2017)

AT&T's Ex Parte: Omissions and Misstatements

AT&T Comment (p. 8)

Terminating End Office charges have been reformed, while the proportion of Transport and 8YY Database charges are trending higher



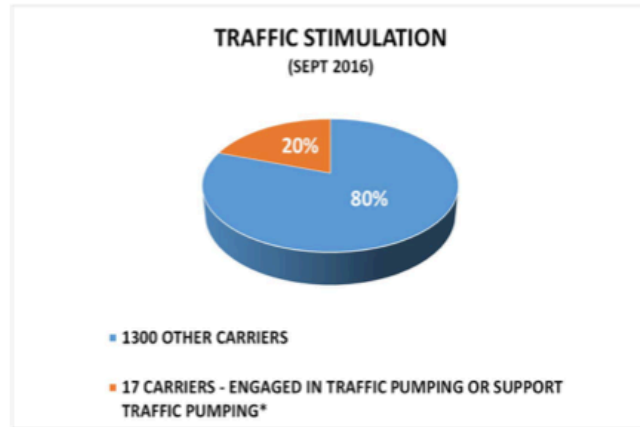
James Valley/Northern Valley Response

- AT&T's presentation may be misleading because AT&T does not disclose its total expenditure for access charges
- No basis to conclude that AT&T is paying more for transport today than it did prior to *Connect America*
- With end office charges being phased out, no surprise that transport would be a bigger portion of the remaining expenses, but this is a meaningless analysis without understanding the total savings AT&T has gained since 2011

AT&T's Ex Parte: Omissions and Misstatements

AT&T Comment (p.10)

Access Stimulation: Continues to be a significant issue



Note: IXC terminating switched usage expense

*% of spend is considerably higher when including carriers that deny traffic pumping

James Valley/Northern Valley Response

- In light of AT&T's continued self-help, the Commission must question whether the discussion of expenses reflects amounts actually paid by AT&T
 - AT&T has unlawfully withheld from Northern Valley, but are Northern Valley's bills included as an expense by AT&T?
- Not clear what carriers AT&T *believes* are engaged in access stimulation
 - What does AT&T mean when it says the chart includes carriers that "support traffic pumping"?
- Does AT&T include all traffic going to the LEC or only traffic terminating to conference call and chat line providers?

AT&T's Ex Parte: Omissions and Misstatements

AT&T Comment (p. 13)

Mileage Pumping: If direct connects are not allowed, mileage charges are increased

Due to high transport costs, including mileage, carriers are incited to establish facilities in rural or hard-to-reach locations

From Transformation Order ... the record contains allegations of "mileage pumping," where service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges.



James Valley/Northern Valley Response

- This is the path to Northern Valley's Redfield, SD exchange
- But, Northern Valley did not "establish facilities in rural or hard-to-reach locations"
 - Northern Valley has always been located in rural South Dakota, because it is a wholly owned subsidiary that provides competitive broadband and telephone services in Redfield and Aberdeen
 - Northern Valley did not do anything to inflate its charges; it has always provided and billed for transport services from Sioux Falls to Groton
 - SDN's operating agreement precludes Northern Valley from offering direct connect services for traffic routed in TDM
 - AT&T has rejected other options

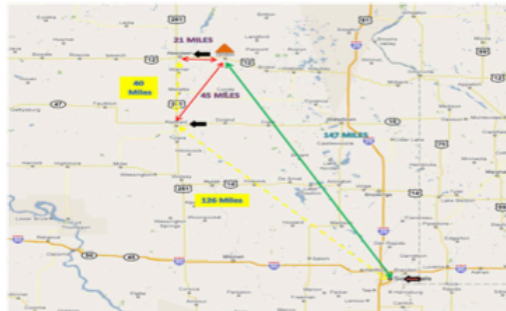
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James Valley/Northern Valley Response

- AT&T cannot obtain a new substantive right to use a CLECs' facilities to establish a "direct connect" through its forbearance petition:
 - Congress imposed no such requirement. 47 U.S.C. §§ 251(a)(1) permits CLECs to connect directly or indirectly, while 251(c)(2)(B) requires ILECs to permit a direct connect.
 - *In re Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd. 15499, 16171 (1996) ("competitive telecommunications carriers that have the obligation to interconnect with requesting carriers may choose, based upon their characteristics, whether to allow direct or indirect interconnection")
 - 47 C.F.R. § 61.26(a)(3)(i) confirms that CLECs provide the functional equivalent when they provide tandem-switched transport (no obligation to have a direct connect offering)

- Rejected SDN's arguments that Northern Valley's state law claims were preempted, with a single exception (dealing with a S.D. trade regulation)
 - All remaining state law claims, including conversion and breach of operating agreement, are now set for trial in March 2018

James Valley & Northern Valley v. South Dakota Networks, LLC, Civ. 15-134 (Brown County, S.D. Cir. Ct., July 17, 2017)

- The Court agreed to seek an *amicus* brief from the Commission regarding the legality of SDN's unfiled, off-tariff agreement with AT&T and whether SDN manipulated its 2014 cost study
 - Northern Valley and James Valley do not seek the Commission's consideration of whether SDN's conduct was lawful through this docket, rather those issues will be appropriately raised to the General Counsel's office in accordance with the Court's order.
 - This background is provided only for purposes of placing SDN's recent *ex parte* filings regarding AT&T's Petition for Forbearance in appropriate context.

SDN's Ex Parte: Omissions and Misstatements

SDN Comment

SDN also argued that AT&T's proposal is not necessary to address the issue AT&T identified namely, that certain CLECs engaged in access stimulation refuse to allow direct trunking from the IXC to the CLEC's end office. SDN urged the Commission to make clear that CLECs engaged in access stimulation cannot refuse to allow direct trunking from the IXC to the CLEC's end office or to accept other solutions that result in similar outcomes.

James Valley/Northern Valley Response

- SDN's argument to the Commission is a revisionist's history that ignores its long-standing policy, Operating Agreement, and tariff. For years, SDN's policy has been that the CLECs affiliated with an SDN member (like Northern Valley) may not permit an IXC to install a direct connect for the exchange of TDM traffic.
 - SDN went so far as to amend its Operating Agreement in 2013 to make clear that Members could not allow their affiliated CLECs to bypass SDN's tandem switching service for TDM traffic
 - SDN's tariff also makes clear that affiliates provide transport for their traffic and forbids direct connects to members and affiliates (Northern Valley and James Valley are both list as a "Routing Exchange Carrier" in SDN's tariff):

(B) The Routing Exchange Carrier will provide the Transport element between SDN points of interconnection and the end office switch(es) served by SDN's central access tandem and will bill the charges in accordance with its Access Service tariff. All other appropriate charges in the Routing Exchange Carrier tariff are applicable.

SDN F.C.C. Tariff No. 1, Sec. 2.4.8

Transport is provided as tandem switched only. Direct-Trunked Transport as defined in Section 2.6 is not available to a Routing Exchange Carrier's end office since equal access is provided through the SDN centralized access tandem (Federal Communications Commission No. DA 90-1964).

SDN F.C.C. Tariff No. 1, Sec. 5.1

SDN's Ex Parte: Omissions and Misstatements

SDN Comment

SDN argued that the Commission could find that in the case of traffic that terminates to an access stimulator, a CEA provider would be required to charge a switched access rate benchmarked to the rates of the price cap LEC with the lowest interstate switched access rates in the state. For traffic terminating to LECs that are not engaged in access stimulation, a CEA provider would continue to charge its traditional tariffed switched access rate. SDN believes this proposal is in line with the Commission's pricing rules for access stimulators. In addition, SDN believes it would be able to implement such a dual pricing scheme and it should not affect any other SDN rates, which are capped.

James Valley/Northern Valley Response

- SDN has been consistently required to develop its rate for tandem switching pursuant Commission rule 61.38 (rate-of-return carrier).
- As traffic volumes go up, the costs of its CEA service get spread out over that higher volume of traffic, producing a lower per minute rate.
- As long as SDN includes all of the access stimulation traffic switched through its tandem switch, then its cost study produces a lower rate than otherwise would have occurred if SDN did not carry access stimulation traffic.
- But for access stimulation traffic, it is reasonable to conclude that SDN's CEA rates would have been higher.
- There is no logical reason to have a rate-of-return carrier benchmark a portion of its rates.
- Northern Valley's tandem-switched transport rates are already benchmarked and charged to AT&T, anyhow.

SDN's Ex Parte: Omissions and Misstatements

SDN Comment

SDN also urged the Commission to reaffirm that CEA providers may provide access service pursuant to contract and that CEA providers are not precluded from providing non-CEA services via contract.

James Valley/Northern Valley Response

- It recently became public that SDN entered into an off-tariff agreement to provide AT&T tandem switching services at a rate not contained in SDN's tariff. The agreement was not filed with the Commission.
- "Non-CEA services" is not a term in the Commission's rules and is too vague to have any meaning.
 - Tandem switching is the core of what a CEA provider is required to make available on a non-discriminatory basis.
- The Commission recently confronted this issue with regard to a tariff filing by Iowa Network Services.

SDN's Ex Parte: Omissions and Misstatements

SDN Comment

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James Valley/Northern Valley Response

- In response to a recent tariff filing by Iowa Network Services, the Commission confronted the question of whether a CEA provider could have a contract involving tandem switching services. The outcome there is instructive.

	INS's High-Volume Contract Tariff (as originally filed)	INS's Volume-Discount Tariff (as revised to comply with the Commission's rules)
Publicly Filed Rate	Yes	Yes
Rate Available to All Long-Distance Carriers	Yes	Yes
Rate Reduction Tied to Cost Savings for INS	No	Yes (resulting from IXC's commitment to network grooming obligations)
Rate Available for Traffic Terminating to All Interconnected Local Exchange Carriers	No (singled out only access stimulation LECs)	Yes

Thank You

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