

# **EXHIBIT C**



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2 (continued)

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7 ALSO PRESENT:

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9 MR. BOB WEGNER - BOARD MEMBER NVC

10 COURT REPORTER:

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U.S. District Court  
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11 Pierre, SD 57501  
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# # # #

1 equivalent for a CLEC when a CLEC provides access services.

2 So to the extent possible, the definitions, both of  
3 access, customer, end user, things like that, searched for  
4 definitions that were used by the FCC, either in their  
5 regulations or in orders, and adopted those definitions in  
6 order to, again, try to avoid confusion.

7 If I may add, the dispute resolution provision of  
8 the tariff is, in fact, a carefully tailored provision that  
9 was objected to by Sprint and Qwest but ultimately allowed to  
10 become effective, and it sought to avoid the exact scenario  
11 that we're here about today in which a carrier withholds  
12 payment without providing the reasons for withholding and then  
13 makes up the reasons as they go along. And so that dispute  
14 resolution provision is, again, custom tailored, very closely  
15 scrutinized by the FCC before it was allowed to become  
16 effective and deemed lawful.

17 **THE COURT:** What percent of the calls of Northern  
18 Valley Communications are involving the IXC-AT&T versus the  
19 other approximately 14?

20 **MR. CARTER:** Your Honor, I don't have current  
21 statistics today, and it's somewhat challenging for me to  
22 answer that question directly, in part, because it depends on  
23 how much wholesale traffic AT&T voluntarily accepts onto its  
24 network.

25 And what we saw is that the time in which AT&T began

1 withholding in March of 2013, AT&T had experienced a vast  
2 increase in the amount of wholesale traffic they delivered to  
3 Northern Valley for carriers, such as T-Mobile and others,  
4 which they did not have to deliver, that they took on this  
5 traffic voluntarily.

6 And so, as a result of that, it's difficult to  
7 pinpoint any particular number, but I would say that the  
8 volume of traffic that AT&T sends in general is in the 20 to  
9 30 percent range of the traffic; but it sometimes, again, can  
10 go higher when they go out and attract more wholesale traffic  
11 to their network.

12 **THE COURT:** Wholesale traffic -- you give T-Mobile  
13 as an example -- is this cellular phone type traffic?

14 **MR. CARTER:** It could be any other company that  
15 needs to deliver their traffic to Northern Valley.

16 And so long-distance carriers don't all build lines  
17 all over the country. They build lines in certain markets;  
18 but in other markets what they'll do is, they'll pass the  
19 traffic off to another sort of incumbent carrier like AT&T and  
20 have AT&T carry that traffic for them. And so that is a  
21 competitive marketplace in which it is not governed by  
22 tariffs.

23 So the obligation of a company like AT&T, or here  
24 CenturyLink, to carry another carrier's traffic for them is a  
25 completely negotiated transaction.

1           And indeed -- when Mr. Hunseder said that he does  
2 not believe AT&T makes any money on this and tried to talk  
3 about unlimited long-distance plans, it seems to be that he is  
4 ignoring the important part of the record about the  
5 significant volumes of traffic and the associated revenues  
6 that AT&T received directly for voluntarily carrying traffic  
7 to Northern Valley's destination.

8           **THE COURT:** How did your expert -- or whomever --  
9 arrive at a \$50 million figure for AT&T's income associated  
10 with Northern Valley business since they stopped paying the  
11 per-mile charges?

12           **MR. CARTER:** Sure. So that -- that factor -- I  
13 believe -- let me -- to clarify, the \$50 million, I believe,  
14 is gross, and \$30 million is the net that our experts  
15 calculated. \$9 million of that would -- excuse me --  
16 8.2 million of that is solely revenues associated with the  
17 wholesale traffic.

18           So basically the amount of money that AT&T would  
19 owe, had they just paid the bills on time, is about equal to  
20 the amount of money that they've received on wholesale  
21 contracts alone.

22           **THE COURT:** I thought if they had paid the bills of  
23 Northern Valley it was something like \$15 million. Is there  
24 an in component that you built into that figure, or what?

25           **MR. CARTER:** That's correct. That's correct, Your

1 Honor.

2 **THE COURT:** It's a pretty hefty interest component.

3 **MR. CARTER:** At the time we filed the -- the  
4 number -- the briefs, \$9 million was the amount pre-interest,  
5 and then the residual was amounts that are accrued pursuant to  
6 the tariff provisions there.

7 The calculation of the amount that AT&T received as  
8 revenues, it involved an analysis of both AT&T's per-minute  
9 plan. So there are, in fact, some customers that still pay  
10 AT&T for each minute of traffic when they call -- make a  
11 long-distance phone call. So those are pretty easy to  
12 segregate.

13 And then the unlimited long-distance plan that  
14 Mr. Hunseder mentioned, of course, are more difficult to  
15 segregate; but AT&T's position is that it means they get no  
16 value, that they -- that for unlimited long-distance  
17 subscribers there's no value to AT&T when they deliver traffic  
18 to Northern Valley. But, of course, that would be the case if  
19 they deliver traffic to anyone, right? Because it's an  
20 unlimited long-distance plan.

21 So they seek to assign no value to that. We seek to  
22 apportion the value, right? So looking at what it is the  
23 customer subscribed to, what percentage of traffic went to  
24 Northern Valley's destination, and coming up with a per-minute  
25 rate that can be applied. And so that's what our experts did.



1 And then from that, they deducted the appropriate expenses  
2 that AT&T incurred in providing their services and the  
3 traffic.

4 And so that's how we arrived at the \$30 million  
5 being the net profit calculation.

6 **THE COURT:** All right. AT&T at one point in their  
7 briefing referred to something like 99 percent of Northern  
8 Valley Communications' business being access stimulation. I  
9 didn't know whether that was hyperbole or not. Is it indeed  
10 something like 99 percent is these conference calling and free  
11 calling type organizations?

12 **MR. CARTER:** I think it's fair to say it's certainly  
13 over 90 percent. I mean, I don't think that we have an exact  
14 calculation. Again, it would depend on the day, but it's  
15 certainly very high.

16 And if I could -- if I could make a point about  
17 that, though, Your Honor. When the FCC adopted the Connect  
18 America Fund rules, there was a point in which the company,  
19 Northern Valley, had to make a decision. Do we proceed  
20 forward with access stimulation under the new rules and bring  
21 the rates that we charge down significantly? Or, do we  
22 instead not proceed with access stimulation and continue to  
23 then be able to charge the higher rural benchmark rates that  
24 would otherwise be applicable to Northern Valley?

25 And so they -- and we have both the CEO and members

1 of the board -- did an analysis. They did an analysis because  
2 ultimately Northern Valley is owned by a cooperative. Its  
3 mission is to try to determine how best they can serve the  
4 community in which they operate, how they can provide the  
5 latest and most advanced services to that community.

6 And so they did an analysis, and the analysis was  
7 close. It wasn't by any means a windfall in which, if they  
8 just continued to engage in access stimulation, they would  
9 make a lot more money; rather, it was a prudent decision based  
10 on the fact that we finally had clarity of the new rules.

11 And the AT&T withholding that has occurred over the  
12 past few years does, in fact, disrupt that reasonable business  
13 choice that Northern Valley and the board of directors made in  
14 deciding to forego much higher per-minute charges that it  
15 could have collected under -- under the tariff. It did not  
16 engage in access stimulation as compared to the much lower  
17 rates; it does collect on the higher volumes of traffic.

18 So it is a delicate equilibrium there that was an  
19 intentional choice once the FCC had clarified the rules of the  
20 road.

21 **THE COURT:** All right. I'd like to get into whether  
22 the tariff is enforceable. And one of the arguments that was  
23 made by Mr. Hunseder is that the 2008 decision -- I think it's  
24 PrairieWave; he called it PrairieView at times, but I think  
25 it's PrairieWave -- is one that ought to be read to require a

1 UNITED STATES DISTRICT COURT  
 2 DISTRICT OF SOUTH DAKOTA SS CERTIFICATE OF REPORTER  
 3 CENTRAL DIVISION

4 \* \* \* \* \*

5 I, Cheryl A. Hook, Official United States District  
 6 Court Reporter, Registered Merit Reporter, Certified Realtime  
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 8 foregoing transcript is the true, full, and complete  
 9 transcript of the above-entitled case, consisting of pages 1  
 10 through 72.

11 I further certify that I am not a relative or  
 12 employee or attorney or counsel of any of the parties hereto,  
 13 nor a relative or employee of such attorney or counsel; nor  
 14 do I have any interest in the outcome or events of the  
 15 action.

16 IN TESTIMONY WHEREOF, I have hereto set my hand  
 17 and official seal this 28th day of April, 2017, at Pierre,  
 18 South Dakota.

19 */s/ Cheryl A. Hook*

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