

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**MISSOURI NETWORK
ALLIANCE, LLC**

2005 W. Broadway
Building A, Suite 215
Columbia, MO 65203
(573) 777-4200

Complainant,

v.

**SPRINT COMMUNICATIONS
COMPANY, L.P.**

6450 Sprint Parkway
Overland Park, KS 66251
(202) 730-1328

Defendant.

Proceeding No. 18-236

EB-18-MD-004

**MISSOURI NETWORK ALLIANCE, LLC'S REPLY
TO ANSWER OF SPRINT COMMUNICATIONS COMPANY L.P.**

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September 10, 2018

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Set forth below are the specific replies of Missouri Network Alliance, LLC ("MNA") to the numbered paragraphs set forth in the answer of Sprint Communications Company L.P.

("Sprint"). Any claims not specifically addressed are denied.

1. Paragraph 1 does not contain any factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

2. MNA denies that its invoices to Sprint for tandem switching and transport services were invalid or unlawful. MNA also denies that Sprint's withholding of MNA's lawfully tariffed charges was consistent with 47 U.S.C. § 251(b)(5) and the Commission's

USF/ICC Transformation Order and implementing rules.¹ As explained in MNA's Legal Analysis and Reply Legal Analysis, Sprint engaged in unjust and unreasonable practices in violation of 47 U.S.C. § 201(b) by: (1) failing to pay lawfully tariffed charges that Sprint was legally obligated to pay under Section 251(b)(5) as well as the Commission's *USF/ICC Transformation Order* and implementing rules; and (2) helping itself to a retroactive refund by withholding payments on invoices from MNA to recoup undisputed charges Sprint had paid previously. Paragraph 2 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

3. MNA denies that its Formal Complaint is a "collection action." MNA also denies that Sprint is not acting "as a common carrier providing regulated common carrier services." When a Sprint customer makes a long-distance call that is routed through MNA's tandem to the terminating LEC, Sprint is providing common carrier services, and the "exchange" of that call between Sprint, MNA, and the terminating LEC is governed by the Section 251(b)(5) reciprocal compensation framework. Paragraph 3 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

4. Sprint's denial that it withheld payment of MNA's invoices to help itself to a retroactive refund of amounts that Sprint had paid previously to MNA and only disputed after the fact is inconsistent with Sprint's admission of the allegations in Paragraphs 24 through 28 of MNA's Formal Complaint. Thus, the factual allegations in Paragraph 4 of MNA's Formal Complaint should be deemed admitted. Paragraph 4 does not contain any other factual

¹ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*USF/ICC Transformation Order*"), *aff'd Direct Communs Cedar Valley v. FCC*, 753 F.3d 1015 (10th Cir. 2014).

allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

JURISDICTION

5. MNA denies that its Formal Complaint is a “collection action.” MNA also denies that Sprint is not acting “as a common carrier providing regulated common carrier services.”

When a Sprint customer makes a long-distance call that is routed through MNA’s tandem to the terminating LEC, Sprint is providing common carrier services, and the “exchange” of that call between Sprint, MNA, and the terminating LEC is governed by the Section 251(b)(5) reciprocal compensation framework. Paragraph 5 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

6. Paragraph 6 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

STATEMENT REGARDING SUPPORTING MATERIAL

7. Paragraph 7 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

REQUIRED CERTIFICATIONS

8. Paragraph 8 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

THE PARTIES

9. Paragraph 9 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

10. MNA denies that Sprint is not “acting as a common carrier for the purposes of this Complaint” and is “not a provider of regulated common carrier services.” When a Sprint customer makes a long-distance call that is routed through MNA’s tandem to the terminating LEC, Sprint is acting as a common carrier and is providing common carrier services, and the “exchange” of that call between Sprint, MNA, and the terminating LEC is governed by the Section 251(b)(5) reciprocal compensation framework. MNA also denies that Sprint is acting “as a customer of MNA” in the exchange of traffic subject to regulation under Section 251(b)(5). Paragraph 10 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

FACTS IN SUPPORT OF COMPLAINT

I. BACKGROUND

A. Relationship Between the Parties

11. Paragraph 11 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

12. Paragraph 12 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

13. Sprint does not plead any facts to support its denial that MNA is a competitive tandem provider that does not own any end offices (either directly or indirectly through an affiliate) or offer telecommunications services to end users. Nor does Sprint plead any facts to

suggest that MNA is engaged in – or has ever been engaged in – “access stimulation,” professing to lack “knowledge or information” regarding this subject. Paragraph 13 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

14. MNA denies that its interstate and intrastate tariffs do not comply fully with all applicable federal and state laws. Paragraph 14 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

15. Sprint does not deny that it can interconnect directly with MNA member companies rather than purchasing tandem services from MNA, professing to lack “knowledge or information” regarding this subject. Paragraph 13 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

16. MNA denies that the charges in its interstate and intrastate tariffs are unlawful. Paragraph 16 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

17. Paragraph 17 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

B. Sprint’s Violations of the Commission’s Rules and the Act.

18. Paragraph 18 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

19. Paragraph 19 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

20. MNA denies that it is a carrier that provides terminating end office switching or that owns any end offices, which are the only carriers subject to the rate reductions mandated under the Commission's transition plan to bill-and-keep as set forth in the *USF/ICC Transformation Order*. Paragraph 20 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

21. MNA denies that its interstate and intrastate tandem switching and transport rates do not comply fully with the requirements of the *USF/ICC Transformation Order* and the Commission's implementing rules. MNA also denies that it is a "local exchange carrier" or otherwise subject to "the FCC's benchmarking requirements." Paragraph 21 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

22. Paragraph 22 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

23. Paragraph 23 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

24. MNA admits that, in June 2014, Sprint first complained to MNA about MNA's tandem rates not complying with Commission rules, asserting that MNA had failed to reduce its intrastate tandem rates to "parity" with interstate rates and disputing the difference between

MNA's invoiced rates and the rates Sprint claims MNA should have invoiced. Paragraph 24 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

25. MNA admits that, in June 2014, Sprint requested a refund of \$10,296, which purported to represent the difference between the intrastate tandem rates charged by MNA and paid by Sprint from June 21, 2012 through April 20, 2014 and the intrastate tandem rates Sprint asserted MNA should have charged during this time period. Paragraph 24 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

26. MNA denies that it is a terminating carrier or a carrier owning any end offices, which are the only carriers required to reduce their intrastate tandem rates to "parity" with their interstate tandem rates under the plain language of the *USF/ICC Transformation Order* and the Commission's implementing rules. MNA also denies that it is "local exchange carrier." Paragraph 26 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

27. MNA admits that, after MNA denied Sprint's June 2014 dispute, Sprint withheld payment of \$10,296 from MNA's invoice dated December 1, 2014. MNA further admits that this withholding represented amounts Sprint requested that MNA refund for the difference between the intrastate tandem rates charged by MNA and paid by Sprint from June 21, 2012 through April 20, 2014 and the intrastate tandem rates Sprint asserted MNA should have charged during this time period – a refund request that MNA had denied. The \$10,296 refund to which Sprint helped itself was a retroactive recoupment of amounts Sprint had paid previously to MNA without dispute. The \$10,296 Sprint withheld from MNA's December 2014 invoice did not correspond to or otherwise relate to any disputed amounts in MNA's December 2014 invoice.

By withholding payment of undisputed amounts from MNA's December 2014 invoice to recoup alleged overpayments Sprint made from June 2012 through April 2014, Sprint engaged in a claw-back scheme that the federal district court and the Fifth Circuit Court of Appeals found to constitute an unjust and unreasonable practice in violation of Section 201(b).² Although MNA admits that Sprint filed a lawsuit in federal district court in June 2017, this suit was filed approximately two and half years after Sprint implemented its claw-back scheme in December 2014. Paragraph 27 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

28. MNA admits that, after MNA denied Sprint's June 2014 dispute, Sprint withheld payment of \$2,947 from MNA's invoice dated January 1, 2015. MNA further admits that this withholding represented amounts Sprint requested that MNA refund for the difference between the intrastate tandem rates charged by MNA and paid by Sprint from June 21, 2012 through April 20, 2014 and the intrastate tandem rates Sprint asserted MNA should have charged during this time period – a refund request that MNA had denied. The \$2,947 refund to which Sprint helped itself was a retroactive recoupment of amounts Sprint had paid previously to MNA without dispute. The \$2,947 Sprint withheld from MNA's January 2015 invoice did not correspond to or otherwise relate to any disputed amounts in MNA's January 2015 invoice. By withholding payment of undisputed amounts from MNA's January 2015 invoice to recoup alleged overpayments Sprint made from June 2012 through April 2014, Sprint engaged in a claw-back scheme that was found to constitute an unjust and unreasonable practice in violation of Section 201(b) in *Centurytel of Chatham*. Paragraph 28 does not contain any other factual

² See *Centurytel of Chatham v. Sprint Communs. Co.*, 185 F. Supp. 3d 932 (W.D. La. 2016), *aff'd* 861 F.3d 566, 577 (5th Cir. 2017).

allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

29. Paragraph 29 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

30. Paragraph 30 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied

31. Paragraph 31 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

32. Even though it denies that it failed to dispute any MNA invoice based on MNA's alleged failure to comply with the Commission's benchmarking rule and that it failed to assert that MNA was a competitive LEC even subject to this rule prior to March 2017, Sprint does not plead any facts to support this denial. Paragraph 32 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

33. MNA denies that the invoices it submitted to Sprint for the tandem services provided by MNA were invalid or unlawful. Paragraph 33 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

C. The Parties' Dealings and the Ensuing District Court Litigation.

34. Paragraph 34 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

35. Paragraph 35 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

II. SPRINT HAS VIOLATED 47 U.S.C. § 251(B)(5) AS WELL AS THE *USF/ICC TRANSFORMATION ORDER* AND THE COMMISSION'S IMPLEMENTING RULES.

36. Paragraph 36 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

37. Paragraph 37 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

38. Paragraph 38 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

39. MNA denies that its tariffed rates are unlawful. Paragraph 39 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

40. MNA denies that it is subject to the rate reductions mandated under the Commission's transition plan to bill-and-keep as set forth in the *USF/ICC Transformation Order*. Paragraph 40 does not contain any other factual allegations or legal arguments that MNA

is required to address in this Reply. If it does, however, those allegations or arguments are denied.

41. MNA denies that its requests for payment from Sprint for the tandem services MNA provided were invalid or unlawful. Paragraph 41 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

42. Sprint's denial that it clawed back amounts already paid to MNA and thus helped itself to a retroactive refund by withholding payments on invoices that Sprint paid and did not dispute at the time of its payment is inconsistent with Sprint's admission of the allegations in Paragraphs 24 through 28 of MNA's Formal Complaint. Thus, the factual allegations in Paragraph 42 of MNA's Formal Complaint should be deemed admitted. Paragraph 42 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

COUNT I

Section 201(B), 47 U.S.C. § 201(B), (Unjust and Unreasonable Practice)

43. Paragraph 43 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

44. Paragraph 44 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

45. Paragraph 45 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

COUNT II

Section 201(B), 47 U.S.C. § 201(B) (Unjust and Unreasonable Practice)

46. Paragraph 46 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

47. Sprint's denial that it effectively stopped paying MNA's invoices from March 2017 until it discontinued using MNA's tandem in May 2018 is inconsistent with Sprint's admission of the allegations in Paragraph 17 and 33 of MNA's Formal Complaint. Thus, these allegations in Paragraph 47 of MNA's Formal Complaint should be deemed admitted. Paragraph 47 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

48. Sprint does not deny that it engaged in a "claw back" tactic to obtain a retroactive refund on amounts previously paid to MNA as MNA alleged in Paragraph 48 of the Formal Complaint, and thus these factual allegations should be deemed admitted. Paragraph 48 does not contain any other factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

PRAYER FOR RELIEF

49. Paragraph 49 does not contain any factual allegations or legal arguments that MNA is required to address in this Reply. If it does, however, those allegations or arguments are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense. MNA denies that its Formal Complaint fails to state a claim upon which relief can be granted. Under Section 208 of the Communications Act, any person may bring a complaint at the Commission for a common carrier's violation of the Act. 47 U.S.C.

§ 208. MNA's Formal Complaint alleges that Sprint is a common carrier and that Sprint violated Section 201(b) of the Act. In particular, MNA alleges facts that, if true, establish that Sprint engaged in unjust and unreasonable practices in violation of Section 201(b) by: (1) failing to pay lawfully tariffed charges that Sprint was legally obligated to pay under Section 251(b)(5) as well as the Commission's *USF/ICC Transformation Order* and implementing rules; and (2) helping itself to a retroactive refund by withholding payments on invoices from MNA to recoup undisputed charges Sprint had paid previously. MNA's Formal Complaint states valid claims for relief.

Second Affirmative Defense. While asserting the MNA's Formal Complaint should be denied because MNA "seeks damages that are not recoverable at the Commission" for reasons "explained in the attached Legal Analysis," Sprint's Legal Analysis does not address damages. Regardless, consistent with 47 C.F.R. § 1.722(d)), MNA has requested that the Commission first determine the issues in Formal Complaint relating to liability and defer issues regarding MNA's damages in a separate and subsequent proceeding. Thus, Sprint's Second Affirmative Defense is premature, even assuming it were well grounded, which it is not. Furthermore, MNA's Formal Complaint states valid claims for relief under Section 201(b) and seeks appropriate relief for violations of that statute; to the extent the Commission is unable to grant any relief sought by MNA, such relief certainly could be granted by the United States District Court for the Western District of Missouri, which has referred certain issues to the Commission under the primary jurisdiction doctrine.

September 10, 2018

Respectfully submitted,

By: 

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Counsel to Missouri Network Alliance LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2018, I caused a copy of the foregoing Reply to Answer, as well as all accompanying materials, to be served by hand delivery (*) or electronic mail (+) to the following:

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