

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

In the Matter of

**SPRINT COMMUNICATIONS COMPANY L.P.
FRN: 0004-3728-27**

Complainant,

v.

**File No. EB-14-MD-014
ECFS Docket No. 14-223**

**NORTH COUNTY COMMUNICATIONS
CORPORATION,**

Defendant.

NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to 47 C.F.R. § 1.727, Sprint Communications Company L.P. (“Sprint”) submits this Notice of Supplemental Authority in support of its Formal Complaint against Defendant North County Communications Corp. (“NCC”). Sprint files this Notice of Supplemental Authority to bring to the Bureau’s attention four recent orders that are material to the Bureau’s resolution of this Formal Complaint.

First, the United States District Courts for both the Northern and Southern Districts of Iowa have been the forum for numerous lawsuits filed in the last eight years concerning access stimulation practices similar to those at issue in this litigation. Local Exchange Carriers (“LECs”), such as NCC, have billed inter-exchange carriers (“IXCs”), such as Sprint, access charges for terminating telephone calls to the LECs’ free conferencing service or other high-volume partners. Most of the Iowa cases have been consolidated before Chief Judge James E. Gritzner.

Judge Gritzner has recently issued two opinions in cases involving claims between IXCs against multiple LECs and their free-conferencing service partners. One of those cases involves both Sprint and Qwest, *Aventure Communications Technology, LLC, v. Sprint Communications Company L.P. et al.*, No. 4:08-cv-00005-JEG (S.D. Iowa March 19, 2015) (“*Sprint Iowa Order*”), and the other involves just Qwest, *Qwest Communications Co. v. Aventure Communications Tech., et al.*, No 4:07-cv-0078-JEG, 2015 WL 711154 (S.D. Iowa, Feb. 17, 2015). The two Iowa opinions are largely the same and include a detailed discussion of various Commission rulings related to access stimulation. *Sprint Iowa Order* at 12-60. In addition, and of particular relevance, Chief Judge Gritzner dismisses as a matter of law the state law unjust enrichment and quantum meruit counterclaims that various LECs and free conferencing companies had pled against Sprint as an alternative means of recovery if the LECs are not permitted to recover under their tariffs. *See Sprint Iowa Order* at 121-25. After detailing the parties’ arguments, Chief Judge Gritzner granted Sprint’s motion for judgment on the pleadings as to the unjust enrichment and quantum meruit claims asserted by the LECs.

The referrals cases asked both if the traffic to FCSCs qualified under the LEC’s tariff *and* if not, was the LEC nonetheless entitled to compensation by some other vehicle. The *N. Valley* decisions spoke directly to both questions. *N. Valley II*, 26 FCC Rcd. at 10782; *N. Valley I*, 26 FCC Rcd. at 8335. It defies credulity that the LECs continue to maintain, despite consideration of these very traffic pumping cases by various tribunals, that the resounding theme at the very core of the matter – if the tariff access charges do not apply, are the LECs nonetheless entitled to *some* compensation – has somehow been missed by all those tribunals. It has not; the answer is no.

Id. at 125. Chief Judge Gritzner’s ruling is relevant to the matters addressed by the parties, including Issues 2 and 3 referred by the Court, and Sprint hereby submits both the *Sprint Iowa Order* and the *Qwest Iowa Order* into the record in this proceeding so that the Commission may consider them in ruling on Sprint’s Formal Complaint.

Second, on March 18, 2015, the Commission issued an order in a dispute between AT&T and two Michigan LECs. *AT&T Services Inc. and AT&T Corp. v. Great Lakes Comnet, Inc. and Westphalia Tel. Co.*, ECFS Proceeding No. 14-222, File No. EB-14-MD-013. Paragraph 25 of the order discusses how the factfinder is to determine which ILEC is the competing LEC to which the CLEC is obligated to benchmark its rates under the *Seventh Report and Order*. There, the facilities being used were located outside of the rural LEC's service area, and the Commission determined that meant that the competing ILEC was the RBOC rather than the ILEC the CLEC claimed to benchmark. Here, Sprint argued that, in Illinois, the competing ILEC was Verizon (later Frontier) because the facilities terminating the calls to HFT were in DeKalb, Illinois, which is in Verizon/Frontier's service area. See Complaint ¶¶ 9, 162, 166, 292. NCC argued that the competing LEC was Leaf River Tel. See Answer ¶¶ 154, 157 (arguing that CLEC's need not be located in the exchange that the competing ILEC serves).

Also in the AT&T case, the Commission found in paragraphs 32 and 33 that it is a violation of the Act for a carrier to bill for service provided by an Affiliate. Sprint's position in the Complaint is that NCC billed and sued to collect charges for services that were actually provided by other affiliated corporations under common ownership with NCC.

Finally, Sprint's Complaint refers to a parallel lawsuit in California state court between North County Communications Corp. of California and Vaya Telecom regarding intrastate access charges. A trial in that case was held on March 9-11, 2015. *Tentative Decision After Bench Trial, North County Communications Corp. v. Vaya Telecom Inc.*, Case No. 2011-83845 (Superior Court of San Diego, Cal.) ("Vaya Order"). The judge heard from two witnesses, including NCC's owner, Todd Lesser. *Vaya Order* at 4-7. After NCC rested, the Court granted Vaya's motion for nonsuit because the plaintiff failed to present evidence to support each

element of its pled counts. The court specifically found that NCC is “not a bona fide telephone company, and is therefore not entitled to enforce its tariff.” Order at 8.

Respectfully submitted,

/s Keith C. Buell

Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Keith Buell
12502 Sunrise Valley Drive
VARESA0209
Reston, VA 20196
(703) 592-2560
Fax: (703) 433-4804
Keith.Buell@sprint.com

William Lawson
6450 Sprint Parkway
Mailstop KSOPHN0304
Overland Park, KS 66251
(913) 315-9405
(913) 523-1685 (fax)
William.lawson@sprint.com

*Counsel for Sprint Communications
Company L.P.*

Dated: March 27, 2015

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2015, copies of the foregoing Notice of Supplemental Authority were served via the method specified below to the following:

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
Via ECFS

A.J. DeLaurentis
Rosemary McEnery
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street S.W., Room 5A-848
Washington, D.C. 20554
Via e-mail

Dale Dixon
Counsel for North County Communications Corp.
Law Offices of Dale Dixon
1155 Camino Del Mar, #497
Del Mar, CA 92014
Fax: (888) 677-5598
Via ECFS and e-mail

/s Keith C. Buell