



1401 Eye Street, NW  
Seventh Floor  
Washington, DC 20005

Telephone: (202) 467-6900  
Fax: (202) 467-6910  
www.wcsr.com

Ross A. Buntrock  
Direct Dial: (202) 857-4479  
Direct Fax: (202) 261-0007  
E-mail: rbuntrock@wcsr.com

October 17, 2008

**VIA ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Notice of *Ex parte*: WC Docket 07-135**

Dear Ms. Dortch:

On October 16, 2008, James Graft of Northern Valley Communications Inc. (“NVC”) and Ryan Thompson of Sancom, Inc. (“Sancom”) and along with counsel, Ross A Buntrock, Womble Carlyle Sandridge & Rice, PLLC had separate *ex parte* meetings with the following:

- Commissioner Jonathan Adelstein and Scott Bergmann;
- Nicholas Alexander, Legal Advisor to Commissioner Robert M. McDowell; and
- Amy Bender, Legal Advisor to Commissioner Kevin Martin.

In each of the meetings, NVC and Sancom discussed the fact that AT&T, Verizon, Qwest and Sprint have been engaged in illegal self-help against NVC and Sancom since early 2007 until the present day. Specifically, the IXCs have ceased paying any portion of the carrier access bills for tariffed terminating switched access services provided by NVC and Sancom, including even the *undisputed* portions of those bills. The IXCs have undertaken their self-help gambit, even in the face of long-standing Commission precedent against self-help, particularly in the context of disputes regarding access charges.<sup>1</sup> The Commission has previously held that “a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services *duly performed* but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.”<sup>2</sup>

---

<sup>1</sup> See *MGC Communications, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd. 11,647 (Com. Car. Bur. July 16, 1999); *In the Matter of Communique Telecommunications, Inc. d/b/a LOGICALL*, Declaratory Ruling and Order, 10 FCC Rcd. 10,399 (Com. Car. Bur. May 23, 1995).

<sup>2</sup> See *NOS Communications, Inc., v. AT&T Co.* 7 FCC Rcd 7889, 1992 FCC LEXIS 7173 (1992)

In addition, the Commission held just last year “[T]hat carriers that contend that the access charges of a LEC are unreasonable should use these mechanisms to seek relief and may not engage in self-help actions...”<sup>3</sup> NVC and Sancom urged the Commission to take immediate action to require the IXCs to pay undisputed access bills, which are a significant and important revenue stream for small rural carriers who are investing tens of millions of dollars to bring robust services offerings, including voice, video and data, to underserved rural markets in South Dakota. Without the Commission’s intervention, the IXCs will continue unfettered their self-help campaign to drive NVC and Sancom out of the market.

Respectfully submitted,

/s/

Ross A. Buntrock

cc: **Via Electronic Mail**  
Commissioner Jonathan Adelstein  
Amy Bender  
Scott Bergmann  
Nicholas Alexander

---

<sup>3</sup> See *Declaratory Ruling and Order Establishing Just and Reasonable Rates for Local Exchange Carriers Call Blocking by Carriers*, 22 FCC Rcd 11629, ¶ 1 (2007).