

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Sprint Communications Company L.P.,

Plaintiff,

vs.

Superior Telephone Cooperative; The Farmers Telephone Company of Riceville, Iowa; Reasnor Telephone Company, LLC; Farmers and Merchants Mutual Telephone Company; Aventure Communication Technology, LLC; Dixon Telephone Company; Great Lakes Communication Corporation; Interstate 35 Telephone Company d/b/a Interstate Communications Company; Mediapolis Telephone Company; Spencer Municipal Utilities; Global Conference Partners, LLC d/b/a FreeConference.com; Keenan Communications Inc. d/b/a QualityConferenceCall.com; Future Fone Services Inc. d/b/a FuturePhone.com; FuturePhone.com LLC d/b/a FutureFone.com; Does 1-10; and Roes 1-10,

Defendants.

Docket No. 04:07-cv-00194

**PLAINTIFF’S COMBINED
RESPONSE TO DEFENDANTS’
MOTIONS TO DISMISS OR STAY**

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II. Sprint’s Claims are Properly Based on Challenges Consistent With the Filed Tariffs. 8

A. Sprint’s claims under the Communications Act are not barred by the filed tariff doctrine. 8

21, 29.¹⁵ In any event, to the extent the Defendants are arguing that some other provision of their tariff is applicable to the services in question or they are somehow otherwise able to charge for their service, it is their burden to assert the justification for the charge and how much they believe damages should be reduced thereby. In the absence of such an explanation, there is no basis to reduce damages at all, much less a basis to evaluate whether the hypothesized explanation would warrant a primary jurisdiction referral to the FCC.

In contrast to the arguments set forth by Defendants, it is clear that there are strong reasons for this Court to reject a primary jurisdiction referral. First, it is only this Court that can resolve both the interstate and intrastate parts of Sprint's claims. Some of the traffic at issue here is intrastate traffic, where the caller is both located in Iowa and dialing a number in Iowa. In those instances, the intrastate rather than the interstate tariffs apply, and it is the IUB, not the FCC, that has concurrent jurisdiction with this Court to resolve the intrastate claims. So a primary jurisdiction referral in this case would require referral to both the FCC and IUB with the attendant delays and expenses from both. Moreover, it is possible the FCC and IUB would reach different conclusions in interpreting the same tariff terms in the interstate and intrastate tariffs, creating the very inconsistency the LEC Defendants claim to want to avoid. Second, certain Call

¹⁵ See also *Total Telecomms.*, 16 F.C.C.R. 5726, ¶ 40 (holding that “[b]ut for” its unlawful conduct, carrier “would not have charged AT&T anything at all” for alleged service, and therefore granting AT&T damages in amount AT&T paid for alleged service, plus interest). The Superior Defendants quote that portion of the *Total* decision that states generally and in dicta that “a purchaser of telecommunications service is not absolved from paying for the rendered services solely because the services furnished were not properly encompassed by the carrier’s tariff.” Superior Br. 11 (quoting *Total*, 16 F.C.C.R. 5726, ¶ 43). However, the D.C. Circuit subsequently reversed and remanded that portion of the FCC’s decision and ordered “the Commission to consider AT&T’s argument that Total did not provide access service.” *AT&T*, 317 F.3d at 239. (The case settled without resolution of that issue.) The gist of the *AT&T* and *Total* cases is that a sham transaction cannot be used to artificially increase revenues at the expense of other carriers. That is precisely what is occurring in this case, where there is no reason other than arbitrage for the subject calls to pass through small towns in Iowa.

Aventure Communications Technology, LLC v. MCI Communications Services, Inc.

Docket No. 5:07-cv-04095

United States District Court for the Northern District of Iowa (Western Division)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

AVENTURE COMMUNICATIONS
TECHNOLOGY, LLC, an Iowa Limited Liability
Company,

Plaintiff,

-against-

MCI COMMUNICATIONS SERVICES INC.,
d/b/a Verizon Business Services, a Delaware
corporation,

Defendant,

GLOBAL CONFERENCE PARTNERS, LLC d/b/a
FreeConference.com, a California limited liability
company,

Counterclaim Defendant,

FUTUREPPHONE.DOC, LLC d/b/a/
Futurephone.com, a Nevada limited liability
company,

Counterclaim Defendant.

Case No. 5:07-CV-04095

**AMENDED ANSWER TO AMENDED
COMPLAINT, AMENDED
COUNTERCLAIMS, AND JURY
DEMAND**

Defendant MCI Communications Services Inc. d/b/a Verizon Business Services ("Defendant") by its undersigned counsel, for its answer and defenses to Aventure Communications Technology, LLC's ("Plaintiff") Amended Complaint, states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

Paragraph 1: Plaintiff, Aventure Communications Technology, L.L.C., is a limited liability company organized and existing under the laws of Iowa, with its principal place of business in Sioux City, Iowa.

1. Defendant admits the allegations in paragraph 1 of the Amended Complaint.

each other.

COUNT V

Violation of Section 201(b) of the Communications Act (Counterclaim Defendant Aventure)

94. Verizon Business re-alleges and incorporates by reference the foregoing paragraphs.

95. Section 201(b) of the Communications Act prohibits unjust or unreasonable rates or practices by a telecommunications carrier.

96. Aventure engaged in unjust and unreasonable practices by (i) conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Aventure; and (ii) fraudulently billing Verizon Business for Switched Access Service that Aventure did not provide; (iii) billing Verizon Business for Switched Access Service pursuant to unlawful "rural CLEC" tariffs and at unlawful rates; and (iv) billing Verizon Business for purported Switched Access Service that crossed multiple LATAs in violation of Aventure's Tariffs.

97. Verizon Business is entitled to damages in the amount of the unauthorized Switched Access Service charges paid to Aventure, plus reasonable costs and attorney's fees. In this regard, Aventure's federal tariffs were void *ab initio* and, in any event, were not filed with the requisite notice for Aventure to be protected from refunds.

98. Verizon Business is also entitled to an order enjoining Aventure from assessing charges on Verizon Business pursuant to its unlawful traffic pumping scheme.

99. Verizon Business is further entitled to a declaratory judgment and declaration of

Sancom, Inc. v. Quest Communications Corporation

Docket No. 07-4147-KES

United States District for the District of South Dakota (Southern Division)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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*
SANCOM, INC., a South Dakota * CIV. 07-4147-KES
Corporation, *
*
Plaintiff, Counterclaim *
Defendant *
*
vs. * QWEST COMMUNICATIONS
* CORPORATION'S FIRST
* AMENDED COUNTERCLAIMS
*
QWEST COMMUNICATIONS *
CORPORATION, *
a Delaware Corporation, *
*
Defendant, Counterclaimant *
*
vs. *
*
FREE CONFERENCING CORP., *
a Nevada Corporation, *
*
Counterclaim Defendant. *
*
*

Qwest Communications Corporation ("Qwest"), by and through its attorneys, submits its First Amended Counterclaim against Plaintiff/Counterclaim Defendant Sancom, Inc. ("Sancom"), and Counterclaim Defendant Free Conferencing Corporation ("Free Conference"), and alleges as follows:

INTRODUCTION

1. Through this lawsuit, Qwest seeks to stop Sancom from engaging in their illegal, unfair and fraudulent practice of obtaining hundreds of thousands of dollars in purported terminating switched access charges from Qwest to which Sancom is not entitled. Specifically,

B. Sancom Defrauds Long Distance Companies Like Qwest By Generating Unreasonably High Terminating Switched Access Charges and then Providing a Kickback of a Portion of These Charges to the Free Calling Service Companies, Primarily Free Conference.

12. Sancom has undertaken business relationships with certain partners to whom it provides connections – the Free Calling Service Companies including, but not limited to, Free Conference – to exploit Sancom’s exclusive ownership of facilities that can be connected to telephone numbers within their local service area. The goal of these relationships was and is to dramatically increase the amount of long distance traffic delivered through Sancom’s switches to Sancom’s partners, namely to the Free Calling Service Companies, and bill long distance carriers such as Qwest exorbitantly high terminating switched access charges.

13. As part of Sancom’s scheme, it submitted interstate access tariffs with the FCC and intrastate tariffs with the South Dakota Public Utilities Commission, which allow Sancom to collect terminating switched access charges on calls, but only if Sancom meets certain requirements and conditions as stated within the tariffs. Sancom attempts to collect these terminating switched access revenues on all calls routed to or through FCSCs.

14. The interstate and intrastate access tariffs, however, do not apply to calls routed to or through the FCSCs including Free Conference and do not authorize terminating switched access charges on those calls for several reasons set out *infra* herein. Sancom’s tariffs mandate that terminating switched access applies only if, among other things, the calls are made to one of Sancom’s end-user customers, delivered to the end-user’s premises and terminated by Sancom within Sancom’s local calling area.

15. Sancom conspired with the FCSCs including Free Conference to act as their purported local telephone exchange provider. The FCSCs connected their equipment to

**Northern Valley Communications L.L.C. and Sancom, Inc., v. MCI Communications
Services, Inc. d/b/a Verizon Business Services**

Docket No. 1:07-cv-01016

United States District Court for the District of South Dakota (Northern Division)

COUNT VI

(Violation of Section 201(b) of the Communications Act)
(Counterclaim Defendant Northern Valley)

111. Verizon Business re-alleges and incorporates by reference the foregoing paragraphs.

112. Section 201(b) of the Communications Act prohibits unjust or unreasonable rates or practices by a telecommunications carrier.

113. Northern Valley engaged in unjust and unreasonable practices by (i) conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Northern Valley; and (ii) fraudulently billing Verizon Business for Switched Access Service that Northern Valley did not provide, and that was associated with long-distance calls that the Counterclaim Defendants conspired to generate.

114. Verizon Business is entitled to damages in the amount of the unauthorized Switched Access Service charges paid to Northern Valley, plus reasonable costs and attorney's fees.

115. Verizon Business is also entitled to an order enjoining Northern Valley from assessing charges on Verizon Business pursuant to its unlawful traffic pumping scheme.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

NORTHERN VALLEY COMMUNICATIONS, LLC,
a South Dakota Limited Liability
Company,

Plaintiff,

vs.

MCI COMMUNICATIONS SERVICES INC.,
D/B/A VERIZON BUSINESS SERVICES, a
Delaware Corporation,

Defendant,

GLOBAL CONFERENCE PARTNERS, LLC,

Counterclaim Defendant.

SANCOM, INC., a South Dakota
Corporation,

Plaintiff,

vs.

MCI COMMUNICATIONS SERVICES INC.,
D/B/A VERIZON BUSINESS SERVICES, a
Delaware Corporation,

Defendant,

FREECONFERENCEING CORP., a Nevada
Corporation, and CITRIX ONLINE LLC,
a Delaware Limited Liability
Company,

Counterclaim Defendants.

*
* SECOND AMENDED ANSWER TO
* SANCOM'S COMPLAINT,
* AMENDED COUNTERCLAIMS,
* AND JURY DEMAND
*

* Civ. 07-1016
*

* Civ. 07-4106
*

* THIS DOCUMENT RELATES TO
* CIV. 07-4106 ONLY
*

COUNT VI

**Violation of Section 201(b) of the Communications Act
(Counterclaim Defendant Sancom)**

107. Verizon Business re-alleges and incorporates by reference the foregoing paragraphs.

108. Section 201(b) of the Communications Act prohibits unjust or unreasonable rates or practices by a telecommunications carrier.

109. Sancom engaged in unjust and unreasonable practices by (i) conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Sancom; and (ii) fraudulently billing Verizon Business for Switched Access Service that Sancom did not provide; and (iii) billing Verizon Business for Switched Access Service pursuant to unlawful "rural CLEC" tariffs and at unlawful rates.

110. Verizon Business is entitled to damages in the amount of the unauthorized Switched Access Service charges paid to Sancom, plus reasonable costs and attorney's fees. In this regard, Sancom's federal tariffs were void *ab initio* and, in any event, were not filed with the requisite notice for Sancom to be protected from refunds.

Sancom, Inc. v. Sprint Communications Company

Docket No. 4:07-cv-04107

United States District Court for the District of South Dakota (Southern Division)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SANCOM, INC., a South Dakota
Corporation,

Plaintiff,

vs.

SPRINT COMMUNICATIONS
COMPANY LIMITED PARTNERSHIP, a
Delaware partnership,

Defendant.

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CIV. 07-4107

**DEFENDANT'S ANSWER AND
COUNTERCLAIM**

Comes now the Defendant Sprint Communications Company Limited Partnership and for its Answer to the Plaintiff's Complaint states and alleges as follows:

1. As to Paragraph 1, it is admitted only that Plaintiffs have brought an action making the allegations stated. The allegations, however, are denied.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. As to Paragraph 4, it is admitted that the Court has jurisdiction of the Plaintiff's Complaint pursuant to 28 USC § 1332 as there is diversity between the Plaintiff and Defendant and the Plaintiff's claimed damages are allegedly in excess of \$75,000.
5. As to Paragraph 5, this is a legal conclusion to which no response is required.
6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. As to Paragraph 8, it is denied that the bills at issue here are based on originating and terminating access service.

other carriers' phone lines. For example, when a Sprint customer in Virginia places a call to someone in South Dakota, Sprint must use the facilities of the local phone company to deliver the call to the called party.¹ Because it must purchase use of these local facilities, Sprint is not only a provider of telecommunications services, but also a customer of local telecommunications carriers. This counterclaim challenges a scam by Sancom, a local phone company in Mitchell, South Dakota, and its business partners pursuant to which Sancom has billed (and continue to bill) millions of dollars of unauthorized and illegal charges to Sprint allegedly in its role as a customer of the local phone companies.

2. This case involves two types of companies that have conspired together to generate the charges at issue. Sancom is the first type of company, a local exchange carrier ("LEC") that delivers calls to local customers. Sancom has conspired with a second type of company ("Call Connection Company") that has established free or nearly free conference-calling, chat-line, or similar services that callers throughout the United States use to connect to other callers. Sancom and the Call Connection Companies collectively are engaged in unlawful schemes to bill Sprint (along with other carriers) for charges Sprint neither expressly nor implicitly agreed to pay because the charges are not authorized under applicable tariffs. The scam, which is commonly referred to as "traffic-pumping," has two components.

3. First, in contrast to LECs in other parts of the country that often charge considerably less than a penny per minute for similar access services, Sancom charges very high rates – approximately 3.94 cents per minute – to long-distance carriers to "terminate" interstate calls to the local carrier's customers (and more than 12 cents per minute for intrastate

¹ There is an exception when the call is to a Sprint wireless customer, but that exception is not relevant here.

Northern Valley Communications L.L.C. v. Sprint Communications Company

Docket No. 1:08-cv-01003

United States District Court for the District of South Dakota (Northern Division)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

NORTHERN VALLEY
COMMUNICATIONS, LLC, a South
Dakota Limited Liability Company,

Plaintiff,

vs.

SPRINT COMMUNICATIONS
COMPANY LIMITED PARTNERSHIP, a
Delaware partnership,

Defendant.

CIV. 08-1003

**DEFENDANT'S ANSWER AND
COUNTERCLAIM**

Comes now the Defendant Sprint Communications Company Limited Partnership and for its Answer to the Plaintiff's Complaint states and alleges as follows:

1. As to Paragraph 1, it is admitted only that Plaintiffs have brought an action making the allegations stated. The allegations, however, are denied.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. As to Paragraph 4, it is admitted that the Court has jurisdiction of the Plaintiff's Complaint pursuant to 28 USC § 1332 as there is diversity between the Plaintiff and Defendant and the Plaintiff's claimed damages are allegedly in excess of \$75,000.
5. As to Paragraph 5, this is a legal conclusion to which no response is required.
6. As to Paragraph 6, it is denied that Plaintiff qualifies as a competitive local exchange carrier as defined in 47 C.F.R. § 61.26(a)(1) or otherwise in the Federal Communications Commission's regulations. The remainder of Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. As to Paragraph 8, it is denied that the bills at issue here are based on originating and terminating access service.

COUNT FIVE

(Civil Conspiracy)

58. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 57 of its Counterclaim as if fully set forth herein.

59. On information and belief, Northern Valley and one or more of the Call Connection Companies agreed to an illicit arrangement or arrangement as follows: (a) the Call Connection Companies would place a "gateway" to connect calls near Northern Valley's service territory; (b) Northern Valley would assign one or more telephone numbers to the Call Connection Companies; (c) Northern Valley would bill Sprint for terminating access charges on long distance calls that were routed through the Call Connection Companies; (d) the Call Connection Companies would market services designed to increase volumes of traffic routed through Northern Valley's serving area; and (e) Northern Valley would share with the Call Connection Companies a portion of the monies billed to or received from Sprint.

60. As explained above, Northern Valley's conduct in billing Sprint for terminating access services for these calls violates the terms of Northern Valley's federal and state access tariffs, as well as federal and state law. Further, the conduct of Northern Valley and the Call Connection Companies has intentionally caused Northern Valley and these companies to be in wrongful possession and control of monies that rightfully belong to Sprint, contrary to Sprint's possessory right thereto.

61. The agreements reached between Northern Valley and one or more of the Call Connection Companies constitute agreements to take unlawful actions. The agreements between Northern Valley and one or more of the Call Connection Companies constitute a civil conspiracy or conspiracies, and Northern Valley and the Call Connection Companies are liable for the harm

caused by the unlawful acts taken in furtherance of the conspiracy. These acts include the advertising of the free conference calling services, the provision of kickbacks, and the billing of access charges on traffic for which no access charges were due.

62. The unlawful actions taken during and in furtherance of the lawful agreements between Northern Valley and one or more of the Call Connection Companies have injured Sprint. Sprint is entitled to reasonable damages in an amount to be proven at trial.

COUNT SIX

(Violation of Communications Act)

63. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 62 of its Counterclaim as if fully set forth herein.

64. Northern Valley has billed and has collected millions of dollars in charges denominated as “terminating access” charges pursuant to a federal tariff imposing unlawfully high access charges, and based on an unreasonable practice of kickbacks. Because Northern Valley does not qualify as a “rural CLEC” under the FCC’s regulations and federal law, it has no basis for setting its rates for access traffic at such a high level, and its tariff is void *ab initio* and its charges unreasonable pursuant to 47 U.S.C. § 201(b). Sprint is authorized to bring suit for damages for this conduct in this Court pursuant to 47 U.S.C. § 207.

65. Sprint is entitled to reasonable damages in the amount of the unlawful access charges paid to Northern Valley under Northern Valley’s unlawful federal tariffs, plus reasonable costs and attorneys’ fees, pursuant to 47 U.S.C. §§ 206, 207. Sprint will establish the amount of damages at trial.

66. Sprint is also entitled to an order enjoining Northern Valley from assessing charges on Sprint pursuant to its unlawful tariff. 28 U.S.C. §§ 2201, 2202.

Sancom, Inc. v. AT&T Corp.

Docket No. 4:08-cv-04211

United States District Court for the District of South Dakota (Southern Division)

for the reasons stated above, Counterclaim Defendant has not and does not provide AT&T with terminating switched access services under Counterclaim Defendant's filed tariff for such calls.

43. Counterclaim Defendant has violated 47 U.S.C. § 203(c) by charging and continuing to charge for terminating switched access services under its filed tariff in a manner that is contrary to the rates, terms, and conditions in its published tariff.

44. AT&T has been damaged by Counterclaim Defendant's violations of Section 203(c), and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT II
(Unreasonable Practice in Violation of 47 U.S.C. § 201(b);
Billing For Services Not Provided)

45. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 44 of its Counterclaims as if set forth fully herein.

46. Counterclaim Defendant has engaged in and continue to engage in unjust and unreasonable practices in connection with its provision of interstate communications services, in violation of 47 U.S.C. § 201(b), which provides that "all . . . practices" for and in connection with interstate services "shall be just and reasonable," and "any such . . . practice . . . that is unjust and unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

47. Counterclaim Defendant has engaged in a scheme to knowingly charge AT&T and other long distance carriers for terminating switched access services pursuant to its tariff for long distance calls to the numbers advertised by the FCPs with which Counterclaim Defendant has a business relationship.

48. On information and belief, Counterclaim Defendant did not provide terminating switched access services for those calls as that term is defined by its tariff.

Northern Valley Communications L.L.C. v. AT&T Corp.

Docket No. 1:09-cv-01003

United States District Court for the District of South Dakota (Northern Division)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NORTHERN VALLEY COMMUNICATIONS :
L.L.C., : 1:08-CV-06798 (GBD)
 :
Plaintiff, : ECF CASE
 :
v. : JURY TRIAL DEMANDED
 :
AT&T CORP., :
 :
Defendant. :
-----X

ANSWER

Defendant AT&T Corp. ("AT&T") by its undersigned counsel, Sidley Austin LLP, as for its answer and defenses to Plaintiff's Complaint ("Complaint"), dated July 30, 2008, states as follows:

1. AT&T admits that this action purports to collect amounts due under tariffs. AT&T denies the remaining allegations of paragraph 1.
2. AT&T lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2, and those allegations are therefore denied.
3. AT&T admits the allegations in paragraph 3.
4. AT&T admits the Court has subject matter jurisdiction over claims that seek to collect amounts allegedly due under federal tariffs. AT&T denies the remaining allegations in paragraph 4.
5. AT&T admits that it resides in this judicial district. Although venue is proper, AT&T denies that this is a convenient forum for this litigation, and reserves its rights to seek to transfer the venue of this proceeding pursuant to 28 U.S.C. § 1404.