

September 25, 2013

VIA ECFS

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

Ross A. Buntrock

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Re: *Connect America Fund: A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board of Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208

Dear Ms. Dortch:

Northern Valley Communications, LLC (“Northern Valley”), by and through the undersigned counsel, hereby responds to the Notice of Ex Parte filed by Brian J. Benison on behalf of AT&T Services, Inc. (“AT&T”) on September 18, 2013.

Northern Valley is a Competitive Local Exchange Carrier (“CLEC”) that provides local exchange and broadband internet service to residents and businesses in rural South Dakota. Northern Valley also provides local exchange service to high-volume communication services, such as free conference calling services, and switched exchange access services that allow AT&T and other long-distance carriers to transmit their customer’s long-distance calls to Northern Valley for termination with its local exchange customers.

Northern Valley actively participated in the above referenced dockets, including several in-person meetings with Bureau staff, which yielded the *Connect America Fund Order*.¹ In particular, Northern Valley provided comments and information about the ultimately adopted proposal to lower access rates when CLECs, such as Northern Valley, have high volume customers that increase the volume of traffic terminating on their networks. Following the

¹ *In re Connect America Fund: A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board of Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“*Connect America Fund Order*”)

adoption of those new rules, Northern Valley modified its tariffed rates in accordance with the Commission's new requirements and otherwise ensured that its operations fully complied with the Commission's rules and orders concerning its right to assess and collect tariffed exchange access fees.

AT&T, on the other hand, is ignoring those new rules and apparently seeking to impose even more regulation even though the ink has barely dried on the *Connect America Fund Order*. As it did before the Commission adopted the new high volume access rules, AT&T is once again flouting the Commission's tariffed access charge regime and refusing to respect the Commission's rules clearly permitting a carrier to collect access charges for traffic terminating to free conference calling services. Specifically, since March 2013, AT&T has unilaterally decided not to pay Northern Valley's tariffed access charges, even though AT&T previously paid the access charges per Northern Valley's tariff. The unpaid access charges now total in excess of \$4,000,000.00. AT&T's conduct is nothing more than unlawful self help.

That is, AT&T is once again withholding payment from a carrier not because the carrier is violating existing Commission rules, but rather because AT&T seeks to exert its economic power to either make that carrier submit to AT&T's demand for below-tariff rates, or alternatively to convince the Commission to change the rules to suit AT&T's actions, rather than requiring AT&T to conform its conduct to the rules. After years of uncertainty, moving goal posts, and resources wasted on litigation, the Commission should require AT&T to comply with the rules currently in effect before entertaining any newly-invented complaints or proposals for more restrictive regulation.

Even if the Commission were to consider the merits of AT&T's latest complaint, it should nevertheless reject AT&T's misleading allegation that Northern Valley is engaged in a "mileage scheme." AT&T's presentation ignores key facts, most notable of which is that Northern Valley and every other member of South Dakota Network (SDN), the CEA in South Dakota, has consistently provided transport services from SDN's facilities in Sioux Falls to the LEC's switch in the LEC operating territory. Throughout the entire multi-year period leading up to the Commission's new access rules, Northern Valley provided and charged for transport from Sioux Falls, just as it continues to do today. This fact did not change at any time since the creation of SDN in South Dakota and it certainly did not change after the Commission's access charge reforms were adopted in 2011. Thus, unlike other states where the CEA itself has traditionally provided transport services on its network as part of its mileage-insensitive per-minute tariffed access services,² the opposite has always been true in South Dakota. AT&T's suggestion that

² See, e.g., *AT&T Corp. v. Alpine Communications, LLC, Clear Lake Independent Telephone Company, Mutual Telephone Company of Sioux Center, Iowa, Preston Telephone Company, and Winnebago Cooperative Telecom Association*, Order on Reconsideration, File No. EB-12-MD-003, FCC 12-163, ¶ 3 ("The Iowa LECs initially established POIs with the INS network at toll centers in close physical proximity to their operating territories. Then, between 2001 and 2005, each of the Iowa LECs purported to change its POI to Des Moines and

Northern Valley is engaged in some scheme is simply inaccurate, reckless, and baseless. AT&T's position appears to be that it should be provided transport services without paying either SDN or Northern Valley for those services – a position that is completely at odds with the Commission's long-standing view that LECs are entitled to be paid for the services that they provide.

Since Northern Valley (and only Northern Valley) provides and bills for the transport services necessary to reach its territory, AT&T's complaint that CEAs aren't complying with the Commission's new rules is a red herring when it comes to South Dakota. AT&T complains about being charged for transport charges, which are assessed only by Northern Valley, yet AT&T does not and cannot suggest that Northern Valley has not responded to the Commission's access charge reform order. Thus, AT&T is being charged only for those transport services it actually receives and only at rates that are consistent with the Commission's most current rules. Thus, the only scheme at issue is AT&T's scheme not to pay Northern Valley for its lawfully-assessed tariffed access services.

For the foregoing reasons, Northern Valley strongly encourages the Bureau to require AT&T to pay its outstanding invoices and to take no action that would hinder Northern Valley's ability to bill and collect for the transport services that it provides (and has always provided) to long-distance carriers.

Sincerely,



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Counsel for Northern Valley Communications, LLC

cc: Kalpak Gude Tom Parisi
 John Hunter Doug Slotten
 Randy Clarke Pam Arluk

began billing AT&T mileage-based transport charges for carrying the traffic between their local exchanges and Des Moines.”)