

October 24, 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:

On October 22, 2013, my colleague David Carter and I met with Kalpak Gude, John Hunter, Randy Clarke, Pam Arluk, Tom Parisi, and Doug Slotten of the Wireline Competition Bureau. James Groft, CEO of Northern Valley Communications, LLC (“Northern Valley”), joined the meeting by phone. Our meeting was to discuss the issues raised in Notice of Ex Parte filed by Brian J. Benison on behalf of AT&T Services, Inc. (“AT&T”) on September 18, 2013, including AT&T’s self help withholding of payment from Northern Valley and its false allegations that Northern Valley is engaged in a “mileage pumping” scheme.

Our discussion was guided by the presentation that is attached hereto. Of particular importance, we explained to the Bureau staff that the Centralized Equal Access service in South Dakota, known as South Dakota Network or SDN, differs markedly from the service that the Commission considered in *AT&T v. Alpine*.¹ In South Dakota, it has been the practice of member companies of SDN to always provide, and bill for, the transport of traffic from the tandem switch in Sioux Falls to their respective exchanges. This fact has not changed since SDN

¹ 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 began billing AT&T mileage-based transport charges for carrying the traffic between their local exchanges and Des Moines.”)

was created, and certainly not since the Commission released the *Connect America Fund Order*.² Thus, unlike the situation that the Commission explored in Iowa, where carriers were found to have moved their point of presence to be able to bill mileage that otherwise would have been provided by Iowa Network Services without additional cost, AT&T has always been required to pay Northern Valley for transport and has no legitimate excuse for refusing to do so now.

Northern Valley further explained to the Bureau staff that for a period of several months AT&T withheld not simply transport charges from Northern Valley, but *all* access charges in its efforts to force Northern Valley to charge it below-tariffed rates for transport. And, while AT&T is now at least paying a modest amount of the access charges, it continues to withhold millions of dollars due to Northern Valley. Those funds are critical to Northern Valley's ability to continue providing advanced telecommunications services, including broadband Internet access, in the parts of rural South Dakota served by Northern Valley. For this reason, AT&T's deliberate disregard for the Commission's existing rules is harmful to Northern Valley and its customers.

Pursuant to Rule 1.1206, a copy of this letter is being filed electronically with the Commission. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Ross A. Buntrock
Counsel for Northern Valley Communications, LLC

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

² *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")*

NORTHERN VALLEY COMMUNICATIONS

Presentation to the
Federal Communications Commission
Wireline Competition Bureau
October 22, 2013



SERVICE AREA

- Competitive provider in northeast South Dakota
- Brown County
 - population-35,000
 - per capita income-\$23,699
 - household income-\$44,619
- Spink County
 - population-7,000
 - per capita income-\$15,728
 - household income-\$31,717

INVESTMENT & COMMITMENT

- In business since 1997
- Invested tens of millions of dollars in broadband infrastructure
- 35 employees
- Average wage higher than community norms
- Community investment, including:
 - scholarships
 - economic development initiatives
 - community boards



SERVICES

- Wireline broadband internet access
- Wireless broadband internet access
- Mobile broadband internet access
- Business Ethernet
- Managed IT services
- Digital video
- Local and long distance telephone
- Website hosting
- Computer leasing (to those that can't buy)
- Conference calling



CUSTOMERS

- Serve thousands of business and residential customers
- Serve hospitals, clinics, banks, manufacturing, printing, education, agriculture, retail, lodging, and food service

BROADBAND NETWORK

- DSL, FTTH, and wireless
- Available to all customers
- Speeds up to 50 Mb
- Added features-PC support services, online backups, online bill payment, OTT video
- Enabling education, employment, and entertainment that would not otherwise be available

AT&T'S LATEST SELF HELP

- NVC has complied with the FCC's rule changes regarding "access stimulation" adopted in the *Connect America Order*

 - Reduced rates to match the Qwest rates

 - Re-aligned contracts to ensure conference calling companies are "end users"

- Just as it did repeatedly before the Commission reduced access rates in the *Connect America Order*, AT&T is again engaged in self help by withholding payments for access to NVC



AT&T'S LATEST SELF HELP

- AT&T complains now about the mileage that NVC charges, mislabeling it as “mileage pumping”
- NVC applies transport charges for transporting traffic just as it has since it began providing service to rural South Dakota in 1997 – nothing changed after it began serving conference call providers
- AT&T is thus creating a “new” controversy based on facts that existed long before the *Connect America Order* was adopted



AT&T'S LATEST SELF HELP

- AT&T's latest complaint ignores the facts:
 - Central Equal Access service in South Dakota differs from the service in Iowa that the Commission considered in *AT&T v. Alpine*
 - NVC provides and charges for transport from SDN's facilities in Sioux Falls just as it always has; other LECs connected to SDN provide the transport services to their exchanges as well
 - SDN's tariff does not provide for a mileage-insensitive per-minute tariffed transport service
 - If NVC did not charge for transport, SDN would charge its own mileage-sensitive rate



AT&T'S LATEST SELF HELP

- In South Dakota, AT&T's complaint is equivalent to demanding free transport. There is no basis in the *Connect America Order* or other FCC rules for this demand.
- NVC's rates and charges for mileage are fully consistent with the FCC's existing rules.
- After all the years of industry disputes, self help, and litigation, AT&T should be required to comply with the existing rules rather than creating a new industry controversy.

