STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

ONTARIO TELEPHONE COMPANY, INC. and
TRUMANSBURG TELEPHONE COMPANY, INC.,

Case 14-C-0568

Complainants,

-against-

SPRINT COMMUNICATIONS COMPANY L.P.

Defendant.

SPRINT COMMUNICATIONS COMPANY L.P.'S RESPONSE TO COMPLAINANTS' MOTION TO COMPEL

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I. INTRODUCTION

Complainants' Motion to Compel (the "Motion") spends its first three pages repeating the theme of their case: this dispute is about a big company, Sprint, taking advantage of two small rural companies, O&T, by concocting "bogus excuses for not paying," such as the "fallacious claim" that O&T have engaged in traffic pumping. Motion, pp. 1-3. Complainants' argument ignores that courts and regulatory bodies throughout the United States have found this purportedly "bogus" and "fallacious" claim to be meritorious. In fact, it has never been rejected. *See, e.g., In re Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.,* 24 FCC Rcd 14801 (2009), *aff'd, Farmers & Merchs. Mut. Tel. of Wayland, Iowa v. FCC,* 668 F.3d 714 (D.C. Cir. 2011); *Qwest Commc'ns Co., LLC v. Sancom, Inc.,* 28 FCC Rcd 1982 (Enf. Bur. 2013); *AT&T Corp. v. All Am. Tel. Co.,* 28 FCC Rcd 3477 (2013), *recon. den'd,* 29 FCC Rcd 6393 (2014); *Qwest Commc'ns Corp. v. Superior Tel. Coop.,* 2009 WL 3052208 (Iowa Util. Bd. Sep. 19, 2009), *recon. den'd*, 2011 WL 459685 (Iowa Util. Bd. Feb. 4, 2011), *aff'd sub nom., Farmers & Merchs. Mut. Tel. Co. of Wayland v. Iowa Util. Bd.,* No. 11–1899, 2013 WL 535594, 829 N.W.2d 190 (Table) (Iowa Ct. App. Feb. 13, 2013); *XChange Telecom Corp. v. Sprint Spectrum L.P.*, No. 14-CV-54 GLS/CFH, 2015 WL 773752 (N.D.N.Y. Feb. 24, 2015); *Sprint Commc'ns Co. L.P. v. Crow Creek Sioux Tribal Court and Native American Telecom, LLC*, 4:10-CV-04110-KERS (Doc. 281) (Feb. 26, 2016).

Stripping away Complainants' tale of woe, the only question that needs to be decided in this case is whether Complainants' intrastate access tariff applies to the calls at issue. If they do, Complainants are entitled to be paid tariff rates on the calls.[1] *AT&T Corp. v. YMAX Commc'ns Corp.,* 26 FCC Rcd. 5742, 5747-48 (2011) ("Consistent with the[] statutory provisions [of the Communications Act, 47 U.S.C. § 203], a carrier may lawfully assess tariffed charges only for those services specifically described in its applicable tariff."). If the tariffs *do not apply*, however, Complainants are not entitled to any compensation on the calls. *Black Radio Network Inc. v. Pub. Serv.*

[1] For VoIP calling, they would be entitled to receive interstate rates, not intrastate rates. *See Connect America*, *infra*, ¶ 40. For TDM calling they would be entitled to receive rates in their intrastate tariffs.

Comm'n of State of N.Y., 253 A.D.2d 22, 25-26 (3d Dept 1999) (and cases cited therein) (upholding the New York PSC's ruling that providers were not entitled to payment for "pumped" calls and holding that New York holds carriers to the terms of their tariff, construing any ambiguity against the carrier); *Lauer v. N.Y. Tel. Co.,* 231 A.D.2d 126, 129 (3d Dep't 1997) (New York follows the filed-rate doctrine, and mandates strict adherence to tariff requirements). The FCC specifically recognized that if calls do not meet tariff requirements, the CLEC lacks authority to bill anything for terminating long distance calls:

> **[U]ntil a CLEC files valid interstate tariffs under Section 203 of the Act or enters into contracts with IXCs for the access services it intends to provide, it lacks authority to bill for those services**. . . . Defendants have offered no justification for deviating from Section 203 and the filed tariff doctrine, and they may not simply pick and choose the provisions of their Tariffs with which they will comply. (emphasis added)

AT&T Corp. v. All Amer. Tel. Co. 28 FCC Rcd. 3477 (2013) (emphasis added). While this case discussed CLECs, the rules are even more stringent for ILECs, like O&T, whom can only recover via the strict terms of their filed and valid tariffs. *In re Qwest Commc'ns Co. v. N. Valley Commc'ns, LLC*, 26 FCC Rcd. 8332,¶¶5-6 (2011) ("ILECs are required to publish the rates, terms, and conditions applicable to their access service in tariffs filed with the Commission").

Numerous federal courts have applied this black letter law to bar the recovery of termination charges on both interstate and intrastate calls when calls fail to meet tariff requirements. *See, e.g., XChange Telecom Corp. v. Sprint Spectrum L.P.*, No. 14-CV-54 GLS/CFH, 2015 WL 773752 at 8 (N.D.N.Y. Feb. 24, 2015), *citing Connect Insured Tel., Inc. v. Qwest Long Distance, Inc.,* No. 3:10-CV-1897-D, 2012 WL 2995063, at *2 (N.D. Tex. July 23, 2012) ("If a CLEC does not have a filed tariff or a contract with the relevant IXC, it cannot collect switched access charges. . . . A CLEC therefore violates [the Act] by charging an IXC switched access charges that are not billed pursuant to a filed tariff or a negotiated contract, because such charges are unjust and unreasonable."):

> 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.

Qwest Communications Co. v. Aventure Communications Technology, LLC, 86 F. Supp. 3d 933, 1026 (S.D. Iowa 2015) (emphasis in original). Traffic pumping disputes are never impacted by whether the long distance carrier delivering the calls—in this particular dispute, Sprint—made or lost money. As noted, the only question is whether the calling meets tariff requirements.

Sprint propounded discovery requests that went directly to whether the calling in question meets tariff requirements. In stark contrast, Complainants propounded discovery seeking to determine the amount they might be entitled to recover *if the tariffs do not apply* to the calling in question. For one thing, O&T's Complaint does not contain any equitable claims; however, even if it did, the law makes plain that Complainants would have no viable means of recovery if the tariffs do not apply. Complainants' entire motion, therefore, seeks discovery that has nothing to do with the dispute before the Commission. In stark contrast to the Complainants who refused to provide the most fundamental information about the dispute—information courts and commissions routinely find important to analyze traffic pumping cases like this—Sprint fully responded to data requests that had some connection to the case. Once again, courts and commissions have routinely found that discovery requests such as those propounded by Complainants have nothing to do with traffic pumping cases like this one.

The Commission should deny Complainants' Motion in all respects.

II. ARGUMENT

As an initial matter, Complainants do not describe or otherwise attach Sprint's responses to its discovery requests. These responses show Sprint provided detailed information on questions

with any connection to the case. Sprint attaches its Interrogatory responses as ***Exhibit A***, its RFP responses as ***Exhibit B***, and its responses to Requests for Admission as ***Exhibit C***.

A. The Commission Should Reject Complainants' Repeated Requests Seeking Revenue Information from Sprint (RFA Nos. 1-3 and RFP Nos. 5-9).

RFAs Nos. 1-3 all seek information related to the revenue Sprint receives on individual calls. RFA No. 1 seeks information about revenues Sprint receives from other carriers to act as an intermediate or transit carrier. RFA No. 2 seeks information about revenue Sprint received on calls made to Complainants' customers. RFA No. 3 is even more tenuous, as it seeks information about the revenues that Sprints' wireless affiliates—companies that are not even parties to this lawsuit—generated on calls made to Complainants' telephone numbers.

Requests for Production Nos. 5-6 also seek revenue information, which, as explained above, simply is not relevant here. RFP No. 5 seeks the contracts (and related documents) under which Sprint delivers traffic directly or indirectly to Complainants. These contracts would define the amount of money Sprint would be compensated to transmit calls. Likewise, RFP No. 6 seeks "[a]ll billings, invoices, accounting records, and journal entries, which show billings by Sprint or its affiliates" for the delivery of calls.

RFP Nos. 7-9 seek contracts (and all documents referring to contracts), invoices, billings and accounting records to establish the amount of money Sprint received as "an intermediate or transit carrier" to deliver traffic into Complainants' exchanges on behalf of cable company, Time Warner. As an initial matter, in response to Interrogatory No. 19, Sprint explained that it used to have a business relationship with Time Warner, but it did not act as a transit or intermediate carrier. *See* ***Exhibit A***. Beyond that however, as to all of these requests—whether RFAs, RFPs or whether relating to Time Warner specifically or customers generically—Sprint objected that material seeking to uncover Sprint's revenues is both irrelevant to the lawsuit and would be unduly burdensome to

generate. Without citing a shred of authority to support its position, Complainants argue they are entitled to know "just how much money Sprint receives" to deliver calls to Complainants. As explained above, there are countless cases finding the exact opposite.

Complainants contend that Sprint is obligated to provide responses to these requests claiming it will show Sprint was unjustly enriched (Motion, pp. 9-11), a curious argument given that Complainants have not asserted a cause of action for unjust enrichment. Further, Complainants do not cite a single case, statute, or any other authority to support that argument.[2] Perhaps that is because case after case after case has held that revenue information simply is not relevant in a situation like this one. *See Northern Valley Commc'ns, LLC v. Qwest Commc'ns Corp.*, 2010 WL 3672233 *5 (D.S.D. Sep. 10, 2010); *Qwest v. Superior*, Dkt. FCU 07-02, 2008 WL 5235712 at 6 (IUB Dec. 11, 2008) (denying requests 44-46 because of marginal relevance and undue burden to Qwest); *Tekstar Commc'ns Inc. v. Sprint Commc'ns Co. LP*, Civ. No. 08-1130-MJD-SRN (Dkt. 60, Tekstar's motion to compel at 17 regarding interrogatory 15; Dkt. 109 order denying that motion at 6, due to irrelevance and undue burden); *Aventure Commc'ns Tech., L.L.C. v. MCI Commc'ns Serv., Inc.*, 2008 WL 4280371, *2 (N.D. Iowa Sep. 16, 2008); *Connect Insured Tel. Inc. v. Qwest Long Distance, Inc.*, 2011 WL 4736292 *4 (N.D. Tex. Oct. 6, 2011) (citing *Northern Valley* as "questioning relevance of long distance carrier's revenues to local carrier's claim for unjust enrichment."). In fact, in another traffic pumping case, the court rejected Complainants' exact argument:

> NAT's interrogatories 15 and 16 ask Sprint for information about the revenue Sprint has derived from the calls Sprint delivered to NAT. For example, NAT asked Sprint to "[d]escribe fully all long distance plans offered to Sprint's customers for traffic delivered to NAT and the corresponding profit per minute obtained on these plans by Sprint." Docket 273-3 at 9 (NAT interrogatory number 15). NAT's requests for production 11-13 asked Sprint to produce documentation concerning the revenues it

[2] Complainants cite *Black Radio Network v. Pub. Serv. Comm'n of N.Y.*, 253 A.D.2d 25, (Motion, p. 8), for the proposition that the PCS may "interpret a tariff to 'prevent egregious abuses,'" but the holding of that opinion was that the tariff charges did not apply to the information providers self-generated the calls, a practice that the Commission referred to as "call pumping." *Black Radio Network Inc. v. Pub. Serv. Comm'n of N.Y.,* 253, A.D.2d 22, 25, 685 N.Y.S.2d 816, 818-19 (N.Y. App. Div. 1999).

has received from calls it delivered to NAT. For example, NAT asked Sprint to produce "[a]ll documents that identify Sprint's revenue for calls transmitted to NAT for termination." Docket 273-2 at 7 (NAT request for production number 13). Sprint raised a number of objections to these inquiries, including their lack of relevance.

As the propounding party, NAT must make a threshold showing that the requested information falls within the scope of discovery under Rule 26(b)(1). *Hofer,* 981 F.2d at 380. NAT argues that it is entitled to collect the access charges it billed to Sprint under its tariff number 3. Sprint has identified potential arguments against NAT's efforts to enforce its tariff, for example, under the FCC's *Farmers* and *Northern Valley* line of cases. NAT has not explained how the revenue Sprint received is relevant to NAT's ability to enforce its tariff or the *Farmers* and *Northern Valley* cases.

NAT posits that "Sprint has alluded to unspecified claims and defenses that NAT's charges are 'un[just] and unreasonable' and otherwise violate sections 201 and 202 of the Federal Communications Act." Docket 274 at 14. According to NAT, information concerning the revenue Sprint has received would be relevant to Sprint's allegedly unspecified claims. In response, Sprint stated that it has no intention of making any "claim that the rate elements listed in NAT's FCC Tariff No. 3 exceed the rates allowed by the FCC's CAF Order and the step down." Docket 273-9 at 6. NAT replies that there are still "a NAT posits that "Sprint has alluded to unspecified claims and defenses that NAT's charges are 'un[just] and unreasonable' and otherwise violate sections 201 and 202 of the Federal Communications Act." Docket 274 at 14. According to NAT, information concerning the revenue Sprint has received would be relevant to Sprint's allegedly unspecified claims. In response, Sprint stated that it has no intention of making any "claim that the rate elements listed in NAT's FCC Tariff No. 3 exceed the rates allowed by the FCC's CAF Order and the step down." Docket 273-9 at 6. NAT replies that there are still "a myriad of ways" that Sprint's revenues could be relevant to this case. Docket 280 at 9. NAT has not, however, explained what any of those "myriad of ways" might be. Consequently, the court can only speculate. But "[m]ere speculation that information might be useful will not suffice; litigants seeking to compel discovery must describe with a reasonable degree of specificity, the information they hope to obtain and its importance to their case." *Woodmen,* 2007 WL 1217919 at *1 (citing *Cervantes,* 464 F.2d at 994). NAT has not met its threshold burden of demonstrating that the information it seeks falls within Rule 26(b)(1). Thus, NAT's motion to compel more complete responses to interrogatories 15 and 16 and requests for production of documents 11-13 are denied.

Sprint Communications Co. L.P. v. Crow Creek Sioux Tribal Court and Native American Telecom, LLC, 4:10-CV-04110-KERS at 41-43 (Doc. 281) (Feb. 26, 2016); see also *AT&T Corp. v. All Am. Tel. Co.,* 30

FCC Rcd. 8958, 8962-63 ¶ 13, nn. 48-50 (2015) ("Defendants contend that AT&T's supplemental complaint should be dismissed because AT&T would be unjustly enriched if the Commission were to award damages. . . ."; FN 50 "The *Liability Order* did not create a "regulatory gap" entitling Defendants to pursue alternate damage theories").

As noted above, the only question that needs to be decided here is whether the calls meet tariff requirements. If the calls meet tariff requirements, then Sprint is obligated to pay for them under the tariff. *See, e.g.,* N.Y. Pub. Serv. Law § 92(1), (2)(a), (2)(d) (carriers must file and follow their tariffs, including as to access services); *Walton v. N.Y. State Dep't of Corr. Servs.,* 921 N.E.2d 145, 157-58 (2009) (concurring op., J. Read) (filed rate doctrine). If calls do not meet tariff requirements, no equitable theory exists for the LEC to receive compensation outside of its tariffs. *XChange Telecom Corp. v. Sprint Spectrum L.P.,* Civ. 14-54-GLS-CFH, 2014 WL 4637042, at *5 n. 10 (N.D.N.Y. Sep. 16, 2014) (citing *Lauer v. N.Y. Tel. Co.,* 231 A.D.2d 126, 129 [3d Dep't 1997] for New York's filed rate doctrine). *Cf., In re Connect Am. Fund*, 26 FCC Rcd 17663, n. 2026 (2011) (Report and Order and Notice of Further Rulemaking, "*Connect America*"), *aff'd, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *other subsequent history omitted,* ("a carrier may not impose charges other than those provide for under the terms of its tariff"). Whether Sprint received any revenue for the calls is therefore immaterial.

Moreover, even if this information was relevant (and it's not) to identify whether Sprint received any revenue on each of the millions of calls destined for Complainants would be incredibly burdensome. Complainants claim to have assigned about 90 telephone numbers to their calling company business partners. But on Sprints' end, there are likely hundreds of thousands of people calling those 90 numbers, creating millions of unique calls. *See generally* ***Exhibit D*** (Affidavit of Mark Felton describing undue burden in generating revenue information). Sprint has no way to track its revenues from customers by individual calls, or to calculate revenue on a macro level for

calls destined for specific LECs such as Complainants. To answer these requests would literally require an evaluation of each of the millions of CDRs at issue in this proceeding on an individual basis. In other words, to calculate revenues on calls to Complainants' telephone numbers, Sprint would have to analyze all of its customers' monthly bills for whether they called any of those telephone numbers, and then analyze the customers' contracts for their applicable long distance rates at the time, and then determine whether the customer had disputed any of those calls or been given any relevant discounts. To do so would be enormously time consuming. *Id.* at ¶¶ 5-8. Thus, even if Sprint's revenue information were relevant (and again it's not), Sprint still should not be required to produce it because doing so would be incredibly burdensome. *See, e.g., Qwest v. Superior*, Dkt. FCU 07-02, 2008 WL 5235712 at 6 (IUB Dec. 11, 2008) (denying requests 44-46 because of marginal relevance and undue burden to Qwest); *Tekstar Commc'ns Inc. v. Sprint Commc'ns Co. LP*, Civ. No. 08-1130-MJD-SRN (Dkt. 60, Tekstar's motion to compel at 17 regarding interrogatory 15; Dkt. 109 order denying that motion at 6, due to irrelevance and undue burden).

B. The Commission Should Reject Complainants' Contention Interrogatories as Premature and Unduly Burdensome (Interrogatory Nos. 10(a-d) and 11-12).

Complainants propound several Interrogatories asking Sprint to identify each call with specificity that is not subject to access charges (Interrogatory No. 10), and then to explain the reasons why each of the calls are not subject to access charges (Interrogatory Nos. 11-12). There are numerous problems with these requests.

First, Interrogatory No. 10 seeks a call-by-call analysis, which as a foundational matter would require an analysis of each of the call-detail records, or CDRs. One CDR exists for each of the millions of calls at issue. This would require Sprint to pull the Complainants' CDRs from the hundreds of billions of CDRs archived by Sprint over the last several years. To say this would be incredibly burdensome is an understatement. *See* ***Exhibit D*** at ¶ 4.

Interrogatory No. 11 goes even farther asking for a description on a call by call basis of why each of the millions of calls does not meet tariff requirements. The burden inherent in this analysis is obvious on its face. By the time affidavits are due to support its positon, Sprint plans to gather a sampling of CDRs to verify the volume of calls destined for Complainants' Calling Company ("CC") partners. It does not intend to conduct a complete CDR analysis due to the incredible burden. Moreover, if Complainants want to conduct a CDR analysis, they can go to the time and expense of doing so using their own CDRs. The law is plain that the purpose of Interrogatories is not to allow one party to perform its analysis and work for them. *See* 16 NYCRR § 5.8(a)(2) (stating that discovery should be limited to materials and information that "are not already possessed by or readily available to that party"); *see also Pasternak v. Dow Kim*, No. 10-5045, 2011 WL 4552389, at *4 (S.D.N.Y. Sept. 28, 2011) (holding that a party "should not be 'required to parse through documents . . . which [the opposing party] in a position to review [itself]") (citation omitted). New York law is plain that asking an opposing party to conduct a special study is not required. 16 NYCRR § 5.8(c) ("a party will not be required to develop information or prepare a study for another party.").

Second, to fully answer Interrogatory Nos. 10, 11 or 12, Sprint needs discovery from Complainants so it can identify all of the business relationships it has that fail to meet tariff requirements. As Sprint spelled out in response to these interrogatories:

> **Sprint also objects because a complete answer to this question requires complainants to provide it with answers to the written discovery questions that Sprint has propounded. Case law establishes the need for this material to determine whether access charges apply to calls**. *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 24 F.C.C.R. 14801 (2009) ("Farmers II"), *aff'd sub nom, Farmers & Merchs. Mut. Tel. of Wayland, Iowa v. FCC*, 668 F.3d 714 (D.C. Cir. 2011); *Qwest Commc'ns Corp. v. Superior Tel. Coop.*, FCU 07-02, 2009 WL 3052208 (Sept. 21, 2009), *aff'd, Farmers & Merchs. Mut. Tel. Co. of Wayland v. Iowa Util. Bd.*, No. 11–1899, 2013 WL 535594, 829 N.W.2d 190 (Table) (Iowa Ct. App. Feb. 13, 2013) (unofficially published).

See ***Exhibit A*** (bold and underline added). Despite this, in response to Interrogatory No. 12 Sprint outlined the best it could before obtaining discovery responses from Complainants the reasons why access charges did not apply:

> Without waiving and subject to the aforementioned general and specific objections, Sprint does not owe any compensation to Complainants on calls originated from or terminated to those telephone numbers because the calls are not originated by or terminated to end users, are not delivered to an end user premises, and may not terminate in the certificate exchange, each of which is a requirement of Complainants' intrastate access tariffs as preconditions to the billing of access charges. Please see Sprint Attachment 12 for the Definitions section of the P.S.C. No. 3, Section 17 of the Complaint's Intrastate Access Tariff.

See ***Exhibit A***. Sprint does plan to supplement Interrogatory No. 12 after it obtains discovery from Complainants, which to date it has refused to provide.

The law strongly supports Sprint's position. Interrogatory Nos. 11 and 12 ask Sprint to explain all of the facts in support of each of its defenses in the case. These are traditionally called contention interrogatories:

> Contention interrogatories ask a party: to state what it contends; to state whether it makes a specified contention; to state all the facts upon which it bases a contention; to take a position, and explain or defend that position, with respect to how the law applies to facts; or to state the legal or theoretical basis for a contention . . . .

E.E.O.C. v. Sterling Jewelers Inc., No. 08-00706, 2012 WL 1680811, at *8 (W.D.N.Y. May 14, 2012) (denying defendants' motion to compel responses to contention interrogatories because the information plaintiff needed to respond was within defendants' control) (citation omitted); *see also Pasternak, supra*, 2011 WL 4552389, at *2 ("Courts have stricken contention interrogatories which asked a party to describe 'all facts' that supported various allegations of the complaint, finding that to elicit a detailed narrative is an improper use of contention interrogatories.") While Sprint recognizes that contention interrogatories can be an appropriate form of discovery, in situations like this one, where the asking party has not produced discovery, contention interrogatories are usually

deemed to be premature.[3] *See, e.g., E.E.O.C.*, 2012 WL 1680811, at *8; *Protex Int'l Corp. v. Vanguard Products Group, Inc.*, No. CV 05–5355, 2006 WL 3827423, at *2 (E.D.N.Y. Dec. 27, 2006) ("[t]he burden imposed on [plaintiff] in responding to these requests outweighs the likelihood that useful information will be produced when [plaintiff] has not had discovery of [defendant's] documents."); *Shannon v. New York Transit Auth.*, No. 00-5079, 2001 WL 286727, at *3 (S.D.N.Y. Mar. 22, 2001) (finding that because only document discovery had occurred, the contention interrogatories were premature); *In re Repetitive Stress Injury Litig.*, No. 91-2079, 1993 WL 86751, at *1 (E.D.N.Y. Mar. 18, 1993) ("proceeding with factual discovery prior to answering contention interrogatories is the better course of action"); *County of Suffolk v. Lilco*, No. 87-0646, 1988 WL 69759, at *1 (E.D.N.Y. June 13, 1988) ("[c]ontention interrogatories such as those propounded by the defendant here are generally not favored in the early stages of discovery"); *Roth v. Bank of Commonwealth*, No. 88-76-16E, 1988 WL 43963, at *5 (W.D.N.Y. May 4, 1988) (finding that defendants' interrogatories were "contention interrogatories and need not be answered until the substantial completion of pretrial discovery"); *c.f.* Fed. R. Civ. P. 33(c) (stating that "the court may order that [a contention] interrogatory need not be answered until after designated discovery has been completed"); Local Rule 33(c) of the Southern District of New York (stating that "interrogatories seeking the claims and contentions of the opposing party" may only be served "[a]t the conclusion of other discovery").

The Commission should entirely reject Complainants' Motion to Compel responses to Interrogatory Nos. 10-11 and should allow Sprint time to supplement its response to Interrogatory No. 12 until 45-days after is receives detailed discovery from Complainants.

[3] As noted in Sprint's Motion to Compel, thus far Complainants have refused to produce a single document.

C. The Commission Should Reject Complainants' Request to Compel RFP No. 1 as Overbroad and Burdensome as it Seeks all Documents Underlying Each of Sprint's Traffic Pumping Cases Over the Last Decade.

In RFP No. 1, Complainants ask for "any correspondence, memoranda, or other document prepared by or for Sprint, referring or relating to" traffic pumping. Motion, p. 11. In other words, Complainants want everything that Sprint and its attorneys have ever written on this topic. Sprint and undersigned counsel discovered traffic pumping in 2006, and there has been ongoing litigation in multiple jurisdictions since then. In response to RFP No. 1, Sprint provided a complete list of the 32 traffic pumping cases where Sprint alone has been a party over the last 10 years. *See* ***Exhibit*** *E*. From that list, Complainants can pull all of Sprint's public filings. Despite this, Complainants continue to demand all internal memoranda, emails and other documents as well. To comply with this request would require Sprint to comb through tens of thousands if not hundreds of thousands of documents over a 10-year period concerning a scheme that, according to the FCC, cost the industry billions of dollars by 2011 alone. *Connect America* at ¶ 664 ("TEOCO estimates that the total cost of access stimulation to IXCs has been more than $2.3 billion over the past five years"); *cf. id* at ¶ 657 ("Access stimulation schemes work because when LECs enter traffic-inflating revenue-sharing agreements, they are currently not required to reduce their access rates to reflect their increased volume of minutes"). This would also require an evaluation of all of the documents generated for each of these 32 lawsuits, which would generate a privilege log thousands of pages long. The burden is obvious on its face. *See* ***Exhibit D*** at ¶ 9. Moreover, there is no relevance whatsoever. Sprint has produced all of the non-privileged documents related to its dispute with the Complainants. The documents concerning other LECs would concern facts specific to that individual LEC, and many of those documents would be about confidential facts subject to protective orders issued by other tribunals. The Commission should reject this request in all respects.

III. CONCLUSION

In sum, the materials Complainants seek have no bearing on this dispute, as many courts and regulatory bodies across the country have already found. For all of these reasons, the Commission should deny Complainants' Motion to Compel.

Respectfully submitted this 5th day of May, 2016.

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CERTIFICATE OF SERVICE

The undersigned certifies that this 5th day of May, 2016, the foregoing document and attachments have been served to counsel of record for the Complainants Ontario Telephone Company, Inc. and Trumansburg Telephone Company, Inc., via email and e-filing at the Public Service Commission:

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