

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING  
BY AVENTURE COMMUNICATION  
TECHNOLOGY, L.L.C. d/b/a  
AVENTURE COMMUNICATIONS FOR  
APPROVAL OF ITS SWITCHED ACCESS  
SERVICES TARIFF NO. 3

DOCKET NO. TC11-010

**AVENTURE COMMUNICATION TECHNOLOGY, L.L.C.'S  
RESISTANCE TO MOTION TO INTERVENE AND  
REQUEST TO OPEN AN INVESTIGATION AND  
SUSPEND TARIFF DURING THE INVESTIGATION**

COMES NOW, Aventure Communication Technology, L.L.C. ("Aventure"), and for its resistance to Qwest Communications Company 's ("Qwest") Motion to Intervene and Request to Open an Investigation and Suspend Tariff during the Investigation, states:

1. Currently Aventure has no customers or telephone traffic in South Dakota. Aventure has filed its tariff with the Commission as part of its plan to develop its network in South Dakota and provide service to South Dakota customers within the next year. As the Commission is aware, this type of expansion aids economic development in the state, particularly in rural areas. Such expansion by local exchange carriers and the associated economic development is being thwarted by IXC self-interest as displayed by Qwest's motion.

2. Qwest's motion states that:

**"Aventure 's proposed tariff seeks to authorize traffic pumping, a practice that has been found illegal by the Iowa Utilities Board and the FCC".**

(Qwest's Motion at page 1) The allegation is false. In its final order (now subject to Petitions for Judicial Review) in Qwest Communications Corp. v. Superior Telephone Cooperative, Docket No. FCU-07-02, the Iowa Utilities Board held that business arrangements between local

exchange carriers and companies providing conference calling and other services are not per se unreasonable. The IUB's order in that docket simply found that the free conference calling customers of the local exchange carriers were not "end users" as the term was defined in the LECs applicable tariffs and that the LECs could not recover terminating access charges as a result of this definitional determination. Nowhere in that order or in any other docket has the Iowa Utility Board held that these business arrangements are illegal and Aventure would submit that Qwest knows full well that no such pronouncement has ever been made.

The Iowa Utilities Board has adopted rules for rate setting for what it terms "high volume access service" (HVAS). See Rule 199 IAC 22.14(2)"e", Iowa Administrative Code. The IUB would not adopt rules to set access rates for HVAS traffic if it had found this type of traffic, or the business arrangements between the LECs and the free calling companies, to be "illegal" as Qwest falsely charges. In fact, Aventure has a complaint pending against Qwest and other IXCs under Rule 199 IAC 22.14(2)"e" to have a just and reasonable rate set for intrastate HVAS traffic. (IUB Docket No. FCU-2011-0002)

Qwest's allegation that the FCC held "access stimulation" or these business arrangements to be "illegal", is also false. In Qwest Communications Corp. v. Farmers & Merchants Mutual Telephone Company, 24 FCCR CD14801, the FCC simply found that Farmers & Merchants' tariff definitions for "end user" and "customer" did not apply to the free conference calling customers involved in the traffic at issue.

"Qwest has not alleged that revenue sharing arrangements between Farmers and the conference calling companies violate Section 201(b) per se". (FCC 07-175 at paragraph 27.) Furthermore, in its Connect America Fund, Notice of Proposed Rule Making issued February 9, 2011, (W.C. Docket No. 10-90 et. seq.), the FCC made clear that current FCC rules do not prohibit "access

stimulation" or the business arrangements between local exchange carriers and the free calling companies. At paragraph 36 of the N.P.R.M., the FCC stated:

**"We propose to amend our interstate access rules to address access stimulation--arrangements in which carriers, often competitive carriers, profit from revenue sharing agreements by operating in an area where the incumbent carrier has a relatively high per minute interstate access rate. Under our existing rules, the competitive carrier benchmarks its rate to that of the incumbent rural carrier but the revenue sharing arrangement results in a volume of traffic that is more consistent with a larger carrier."** (Connect American Fund N.P.R.M. at paragraph 36)

In this new N.P.R.M., the FCC further noted:

**"The ability to engage in this arbitrage arises from the current access charge regulatory structure as it applies to LEC origination and termination of interstate and intrastate calls."**

The Commission should ask Qwest to provide specific quotes from the IUB or the FCC to support its claim that these regulatory bodies have ruled this traffic "illegal". The FCC's new N.P.R.M. may result in new prospective rules that may affect the rates that carriers can charge for high-volume access services. However, nothing in the N.P.R.M. suggests that the FCC intends to treat such traffic as "illegal" or to prohibit carriers from charging access rates for such traffic, even on a prospective basis. Certainly, the current rules do not prohibit this traffic and do not prohibit the terms of Aventure's tariff, as evidenced by the fact that the FCC recently accepted and "deemed lawful" Aventure's interstate access tariff, FCC Tariff No. 3, which contains terms and conditions that are virtually identical to those in Aventure's proposed South Dakota access tariff.

3. Qwest objects to certain definitions contained in Aventure's tariff and to certain terms and conditions of service. The intrastate tariff filed by Aventure with the Commission is

in all material respects identical to the interstate tariff Aventure filed with the FCC on December 14, 2010. Aventure's FCC Tariff No. 3, over objections by Qwest and other IXCs, was accepted by the FCC and, as of December 31, 2010, was "deemed lawful" under FCC rules. Aventure's response to IXC objections filed with the FCC is attached hereto. Also attached hereto is the FCC's Public Notice, in which it reported the Wireline Competition Bureau's Action to deny the objections of Qwest and the other IXCs to Aventure's interstate tariff. Qwest and the other IXCs made the same objections to the definitions in Aventure's interstate tariff to which Qwest now complains and they objected to the same terms and conditions of service raised by Qwest in this proceeding. All of the IXC objections were denied and Aventure's interstate tariff is in full force and effect and has the force of federal law. Aventure would find itself in an impossible regulatory environment if the definitions and terms and conditions of service contained in its interstate tariff could not be applied to the same customers for the intrastate portion of their calls. Aventure will transmit a copy of its FCC Tariff No. 3 to the Commission if the Commission so desires. Aventure has not attached the tariff to this filing given the size limitations for electronic filings under the Commission's rules.

4. Aventure has filed an intrastate tariff with the Iowa Utilities Board that is identical to the tariff filed with this Commission. The Iowa Utilities Board has suspended that tariff and docketed it for investigation. The IUB's order docketing the tariff does not in any fashion state that the tariff is being docketed because the definitions or terms and conditions of service are illegal but rather because of Aventure's pending complaint under the HVAS rules to have a just and reasonable rate set for high volume intrastate traffic. (See IUB Order of February 17, 2011, in Docket No. TF-2011-0011 and TF-2011-0012)

5. Aventure's current switching equipment is located in Woodbury County, Iowa, not in the State of South Dakota. Aventure is willing to supply all technical specifications for its switching equipment if the Commission desires. Aventure denies Qwest's contention that Aventure's switch at Sioux City, Iowa, is not a true tandem switch.

6. Qwest has "unclean hands". Through December 31, 2010, Qwest owed Aventure \$1,378,766.09 for unpaid access charges and associated finance charges. Despite its failure to pay Aventure for terminating access charges for over 4 years, Qwest continues to utilize Aventure's network for free. Aventure has a lawsuit pending against Qwest in the United States District Court for the Southern District of Iowa, Case No. 4:08-cv-0005 in which Aventure seeks to recover these unpaid charges, finance charges, punitive damages, and attorney fees.

Qwest and Aventure have local interconnection in Sioux City, Iowa. On or before April 10, 2011, Aventure will be filing a complaint with the Iowa Utilities Board concerning Qwest's fraudulent practice of generating "phantom traffic" by intentionally disguising long distance traffic as local traffic thereby jamming Aventure's local trunks and avoiding terminating access charges due under Aventure's "deemed lawful" interstate tariff.

7. Aventure has no current customers or traffic in South Dakota and Qwest admits in its filing that it brings this motion in an attempt to influence other pending Commission proceedings to which Aventure is not a party. The Commission should reject this misuse of its procedures.

WHEREFORE, Aventure prays that Qwest's motion be overruled in its entirety.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on

\_\_\_\_\_.

BY:     U.S. Mail                       FAX  
          Hand Delivered               Overnight Courier  
          Certified Mail                 X ECF

/S/ PAUL D. LUNDBERG