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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Aventure Communication)
Tech., L.L.C. Tariff F.C.C. No. 3) Transmittal No. 5
_____)

**PETITION OF AT&T CORP. TO REJECT
TRANSMITTAL NO. 5 TO AVENTURE’S TARIFF F.C.C. NO. 3**

Pursuant to Sections 201 and 204 of the Communications Act, 47 U.S.C. §§ 201, 204, and Section 1.773 of the Commission’s Rules, 47 C.F.R. § 1.773, AT&T Corp. (“AT&T”) respectfully requests that the Commission reject the tariff revisions set forth in Transmittal No. 5 to Tariff F.C.C. No. 3 (“tariff”) filed by Aventure Communication Technology, L.L.C. (“Aventure”).¹

Aventure issued revisions to its tariff, relating to switched access services, on June 28, 2011, to become effective on July 13, 2011. Aventure’s revised tariff is patently unlawful on many grounds, but the Commission can and should reject Aventure’s revisions as inconsistent with recent decisions that rejected identical tariff revisions filed by Northern Valley Communications (“NVC”).²

¹ Although the Commission should act upon its own initiative under Section 204, rejection or suspension is also warranted under the standards in 47 C.F.R. § 1.773(a)(ii).

² *Qwest Comm’n’s Co. v. Northern Valley Commc’ns Co.*, FCC 11-87, File No. EB-11-MD-001 (rel. June 7, 2011) (“*NVC I*”); *Northern Valley Commn’cs, LLC, Revisions to FCC Tariff No. 3*, WCB/Pricing File No. 11-07, Transmittal No. 5, DA-1132 (June 28, 2011) (“*NVC II*”).

ARGUMENT

Aventure is one of the nation's largest traffic pumpers.³ For many years, its switched access tariff was virtually identical to the access tariff of the LEC involved in the Commission's *Farmers III* decision, in which the Commission found that a traffic pumping LEC violated its switched access tariff because the free calls associated with the scheme had not been terminated to "end users" within the meaning of the tariff.⁴ Under the tariff, an "end user" was required to "subscribe" under the tariff to the LEC's services, and the free calling companies had not done so, instead obtaining any services for free and pursuant to separate agreements.⁵

After the *Farmers III* decision, Aventure filed a new switched access tariff in an attempt to circumvent the decision and to continue to engage in traffic-pumping. Among other things, Aventure revised the definition of "End User" in the tariff to include the following language: "[a]n End User need not purchase any service provided by the Company."⁶ Many other traffic pumping LECs, including NVC, filed tariff revisions with similar language.

NVC's revised tariff was challenged in a formal complaint pursuant to Section 208, and the Commission issued an order on June 7, 2011, finding NVC's tariff to be unlawful. *NVC I*, ¶¶ 1-17. Among other things, NVC had revised the definition of "end user" in its switched

³ See *Connect America Fund*, 26 FCC Rcd. 4554, ¶ 636 (2011) (traffic pumping "occurs when, for example, a [local exchange carrier] LEC enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and 'free' conference calls. The arrangement inflates or stimulates the amount of access minutes terminated to the LEC, and the LEC then shares a portion of the increased access revenues resulting from the increased demand with the 'free' service provider. Although the conferencing or adult chat lines may appear as 'free' to a consumer of these services, the significant costs of these arbitrage arrangements are in fact borne by the entire system as long distance carriers that are required to pay these access charges must recover these funds from their customers.").

⁴ *Qwest Commc'ns Co. v. Farmers & Merchs. Mut. Tel.*, 24 FCC Rcd. 14801 (2009), *recon. denied*, 25 FCC Rcd. 3422 (2010).

⁵ *Id.* ¶¶ 10-25.

⁶ Aventure Tariff FCC No. 3, § 1, Original Page 8, Issued Dec. 15, 2010 (emphasis added).

access tariff to include language that is identical to the language in Aventure's December 2010 tariff filing, and that stated that "[a]n End User need not purchase any service provided" by NVC. *See id.* ¶ 4 (emphasis added). The Commission found the NVC tariff unlawful because its "access service rules and orders establish that a CLEC may tariff access charges only if those charges are for transporting calls to or from an individual or entity to whom the CLEC offers service for a fee." *Id.* ¶ 7. The Commission explained that its "rules require that tariffed CLEC charges for 'interstate switched exchange access services' be for services that are 'the functional equivalent' of ILEC interstate switched exchange access services." *Id.* ¶ 8. A CLEC "provides the 'functional equivalent' of an ILEC's access services only if the CLEC transmits the call to its own end user." Under the Commission's longstanding rules, an "end user" is an entity that pays the carrier a fee for services, and, accordingly, tariff provisions that permit a carrier "to charge IXCs [switched access services] for calls to or from entities to whom [the carrier] offers its services free of charge" violate the Commission's CLEC access charge rules and Section 201(b) of the Act. *Id.* ¶ 8.

The Commission ordered NVC to file a revised tariff, within 10 days of the *NVC I* order, providing "that interstate switched access service charges will apply only to the origination or termination of calls to or from an individual or entity to whom [NVC] offers telecommunications services for a fee." *Id.* ¶ 17. NVC filed tariff revisions that deleted two provisions stating that end users under the tariff need not purchase services from NVC, including the language stating that "[a]n End User need not purchase any service provided." *See NVC II*, ¶ 2.

In an order dated June 28, 2011, the Chief of the Pricing Policy Division of the Wireline Competition Bureau found NVC's revised tariff to be patently unlawful, and rejected the tariff. *NVC II*, ¶¶ 5-10. The order explained that the *NVC I* decision required CLECs' switched access

tariffs to provide that the CLECs' "End Users must pay [the carrier] a fee for telecommunications services." *Id.* ¶ 5; *see also NVC I*, ¶ 17. The NVC tariff revisions did not "make this clear," and were thus in violation of *NVC I* and also unlawfully ambiguous, contrary to the Act and the Commission's rules. *NVC II*, ¶¶ 5-7.

On June 27, 2011 – after the issuance of the *NVC I* order but prior to the release of *NVC II* – Aventure sent the Commission revisions to its tariff, in particular to the definition of "End User."⁷ Aventure deleted the language it had added in December 2010 providing that "[a]n End User need not purchase any service provided by the Company and may include, but is not limited to, conference call providers, chat line providers, calling card providers, call center providers, help desk providers and residential and/or business service subscribers."⁸

Accordingly, the entire definition of End User as Aventure proposes to revise it reads as follows:

"End User"– Any person or entity that is not a carrier who sends or receives an interstate or foreign telecommunications service transmitted to or from a Customer across the Company's Network. A carrier shall be deemed to be an End User when such carrier uses a telecommunications service for administrative purposes, and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an End User if all resale transmissions offered by such reseller originate on the premises of such reseller. Other carriers, including IXCs, are not considered to be End Users under the terms of this tariff unless the Company consents to such classification in writing.⁹

Aventure's revised tariff is unlawful for the same reasons that the Commission rejected NVC's tariffs: Aventure's tariff does not unambiguously provide that interstate switched access service charges will apply only to the origination or termination of calls to or from an individual or entity to whom Aventure offers telecommunications services for a fee. *See NVC I*, ¶ 17; *NVC*

⁷ *See* Letter from S. Thomas, Consultant to Aventure, to Marlene Dortch, FCC, at 1 (June 27, 2011). Although sent on June 27, 2011, Aventure's tariff states that it was issued on June 28, 2011.

⁸ Aventure Tariff F.C.C. No. 3, Original Page 8, Issued Dec. 15, 2010 (emphasis added).

⁹ Aventure Tariff F.C.C. No. 3, 1st Rev. Page 8, Issued June 28, 2011.

II, ¶ 5. Aventure filed these new tariff revisions because it was clear that its December 2010 tariff was inconsistent with the Commission's rules and its decision in *NVC I*, for it provided that Aventure could assess access charges on calls routed to entities that "need not purchase any service provided by" Aventure. However, like *NVC*'s recently rejected tariff filing, Aventure's new tariff revisions do not clearly and unambiguously indicate that switched access charges apply only to calls terminated to end users that pay Aventure for its services. *See NVC I*, ¶ 17; *NVC II*, ¶ 5. Aventure's tariff, therefore, violates the Commission's orders in *NVC I* and *NVC II* and the Commission's CLEC access charge rules, is impermissibly ambiguous, and is patently unlawful under Section 201(b) of the Act.¹⁰ Accordingly, the Commission should issue an order rejecting Aventure's revised tariff filing as a matter of law.

The Commission has ample authority to reject tariffs under Section 201(b) of the Act.¹¹ Indeed, its "authority to reject filings extends to those that are patent nullities as a matter of substantive law as well as those with technical or procedural flaws."¹² Thus, the Commission has rejected tariffs that violate substantive provisions of the Act or the Commission's rules and tariffs that are not clear or explicit.¹³ It is also clear that the Commission's authority to reject tariffs applies to filings by non-dominant carriers, without regard to the fact that such tariffs are

¹⁰ AT&T contends that Aventure's tariff contains numerous other provisions that violate the Act and the Commission's rules. AT&T fully reserves its rights to challenge other tariff provisions pursuant to all available remedies.

¹¹ *Capital Network Sys. Inc. v. FCC*, 28 F.3d 201 (D.C. Cir. 1994) ("[a]lthough the Communications Act does not expressly authorize the Commission to reject tariff filings summarily, courts have inferred that the Commission has the general power to do so under § 201 of the Act").

¹² *Id.* at 204; *see also Municipal Light Boards v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971).

¹³ *See, e.g., NYNEX Tel. Cos. Revisions*, 10 FCC Rcd. 2247, ¶¶ 1-2 (1994) (rejecting tariff because of a conflict with a Commission rule on how a tariff charge should be applied to "lines"); *S.W. Bell Tel. Co. Tariff F.C.C. No. 73*, 11 FCC Rcd. 3613, ¶¶ 12-13 (the Commission has "authority to reject tariffs based on the lack of clarity," including violations of the Commission's rule in 47 C.F.R. § 61.2 that tariffs must be clear and explicit).

“considered prima facie lawful,” 47 C.F.R. § 1.773(a)(ii), or whether the tariff is filed on a streamlined basis pursuant to Section 204(a)(3).¹⁴ Under these standards, Aventure’s revised tariff is, for the foregoing reasons, impermissibly ambiguous, inconsistent with the Commission’s *NVC* orders and its CLEC access charge rules, and violates Section 201(b) of the Act. It should therefore be rejected.

¹⁴ *Capital Network*, 28 F.3d at 206; *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Red. 11233, ¶ 12 (1996).

CONCLUSION

For the foregoing reasons, the Commission should reject Aventure's revised tariff. The Commission should also order Aventure to file tariff revisions on one day's notice within five (5) business days from the release date of this order removing the rejected material and filing a revised tariff that is in compliance with the Commission's rules and orders.

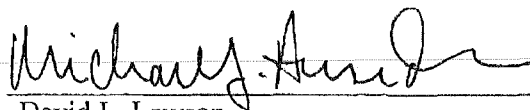
July 5, 2011

Respectfully submitted,

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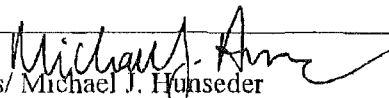
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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2011, I caused true and correct copies of the foregoing
Petition of AT&T Corp. to be served on the following persons as described below:

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