Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Aventure Communication Technology, L.L.C.	)	Transmittal No. 4
	)	
FCC Tariff No. 3	)	

AVENTURE COMMUNICATION TECHNOLOGY, L.L.C.'S RESPONSE TO JOINT PETITION OF AT&T, QWEST, SPRINT, T-MOBILE, AND VERIZON TO REJECT OR, IN THE ALTERNATIVE, TO SUSPEND AND INVESTIGATE AVENTURE'S TARIFF F.C.C. NO. 3

Aventure Communication Technology, L.L.C. ("Aventure")[1] pursuant to 47 C.F.R. § 1.773(b)(1)(iii), hereby responds to the Joint Petition of AT&T, Qwest, Sprint, T-Mobile and Verizon (collectively, "Joint Petitioners") to Reject or, in the Alternative, to Suspend and Investigate Aventure's Tariff F.C.C. No. 3, filed December 15, 2010 ("Joint Petition"). The Joint Petitioners fail to offer any credible arguments to support rejection or suspension of Aventure's FCC Tariff No. 3 (the "Tariff"), Transmittal No. 4 (the "Transmittal") filed on December 15, 2010. The Joint Petitioners' arguments have been previously considered and rejected by the Commission with regard to access tariffs filed by other carriers and do not justify rejection or suspension of the tariff. Any such action would reflect an inconsistency with prior actions of the Commission and would thus prejudice Aventure relative to other similarly situated carriers.

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[1] Aventure is a competitive local exchange carrier ("CLEC") that holds Certificates of Authority in Iowa, Nebraska and South Dakota.

INTRODUCTION AND SUMMARY

Although not germane to their objections to the Transmittal, Aventure is compelled to respond to some of the inflammatory statements that permeate the Joint Petitioners' filing, which distort the facts and clearly seek to prejudice the Commission against Aventure. For instance, the Joint Petitioners open their argument with the pejorative statement that Aventure is "one of the nation's most notorious 'traffic pumpers,'" and then allege that Aventure misrepresented its intention to provide local exchange service to Iowa residents in rural locations, suggesting that Aventure's network was intended to serve only Conference Call Providers (CSPs), rather than "legitimate" customers. These arguments are inflammatory, factually incorrect, and have no bearing on the issues before the Commission in determining whether Aventure's Transmittal should be permitted to go into effect as filed.

First, Aventure has built a state-of-the-art network that was intended to, and does in fact, serve both business and residential customers in some of the most rural areas of Iowa. While the total number of customers is relatively small by the standards of the mega companies who have protested Aventure's Transmittal, the areas served are very rural and the Company has achieved significant penetration in these areas. For instance, Aventure currently serves about 23% of the rural area that includes the town of Salix, Iowa. Likewise, it serves approximately 37% of the residences in Sloan, Iowa and the surrounding rural area and 19% of the residences in the Whiting rural area. These are high cost areas to serve and not the kinds of locations that attract large, well-financed

carriers. It has taken several years and considerable investment for Aventure to build out its network in order to bring high-quality, competitive choices to these rural subscribers.

Second, while Aventure does provide service to conference calling service providers, these are no less "legitimate" customers than any other. They provide a valuable telecommunications service that is used by millions of American businesses to facilitate low-cost communication between multiple parties in multiple locations. The Commission has never held that conference calling service is not a legitimate telecommunications service or, by extension, that the providers of such services are somehow not legitimate customers of a local service provider like Aventure.

Likewise, the Commission has never ruled that interexchange traffic that terminates to conference calling services or other services that may result in relatively high interexchange traffic volumes should be exempt from the payment of switched access charges. To the contrary, the Commission has ruled that interexchange carriers must pay appropriately tariffed access charges on such traffic, and cannot resort to self help tactics by simply refusing to pay access charges for the termination of such traffic, as the Joint Petitioners have done. In fact, AT&T, Qwest, Sprint and T-Mobile have failed to pay Aventure access charges for traffic terminating to *any* of its local exchange customers, including those they deem as "legitimate" local exchange customers served by Aventure.

In its Seventh Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-262 (*Access Charge Reform*), adopted on April 26, 2001, the Commission discussed its concerns about such self help tactics:

> The IXCs' primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. Thus, Sprint has unilaterally recalculated and paid CLEC invoices for tariffed access charges based on what it believes constitutes a just and reasonable rate. AT&T, on the other hand, has frequently declined altogether to pay CLEC access invoices that it views as unreasonable. We see these developments as problematic for a variety of reasons. We are concerned that the IXCs appear routinely to be flouting their obligations under the tariff system. Additionally, the IXCs' attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts. And finally, the uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute. This uncertainty, in turn, poses a significant threat to the continued development of local service competition, and it may dampen CLEC innovation and the development of new product offerings. [Par. 24].

Nearly ten years after that Order was issued, the problem of IXCs failing to pay CLEC—in this case Aventure's--access charges has not diminished, despite Aventure's full compliance with the Commission's requirement that CLEC's tariffed rates for switched access services not exceed those of the ILEC in whose territory they offer service. The Joint Petitioners' allegation that allowing Aventure's tariff to go into effect would cause "substantial harm" due to "overcharges to IXCs" (*Joint Petition, p. 7*) is almost laughable considering the Joint Petitioners' historical pattern of simply refusing to pay Aventure's tariffed access charges.

The Joint Petitioners also make the slanderous and false allegation that Avenure is not conforming its conduct to the law, but instead "continues to look for ways to skirt it...by writing a new tariff with patently unlawful provisions designed to circumvent the Commission and IUB decisions that otherwise prohibit Aventure from billing IXCs switched access charges for calls related to its traffic stimulation schemes." *Joint Petition*, p. 4. Aventure's conduct has always conformed to the law and it is not looking for ways to "skirt" the law. Rather, Aventure has filed Transmittal No. 4 in order to clarify the application of its switched access tariff. As noted above, the Commission has never concluded that switched access charges should not apply to traffic terminating at conference service providers. Rather, in the *Farmer's* decision on reconsideration, it found that specific terminology in the Farmer's tariff was not consistent with Farmer's application of the tariff to traffic that terminated to the certain of Farmer's subscribers. Aventure's attempt to clarify its tariff language to avoid similar ambiguity surrounding the tariff's applicability is clearly not an attempt to circumvent the Commission or the law.

Likewise, Aventure has made every effort to comply with the Iowa Utility Board's new rules related to High Volume Access Service ("HVAS"), although Aventure questions why the Joint Petitioners believe those rules have any bearing on the lawfulness of Aventure's interstate tariff filing. Nevertheless, consistent with the IUB rules, Aventure has sent requests for negotiation to each of the IXCs which it has billed for intrastate access service, including AT&T, Qwest and Sprint. None have responded in a manner that can be regarded as a serious

attempt to engage in good faith negotiations. Instead, they have continued to engage in unlawful self help by refusing to pay Aventure for the access services that it provides to them.

Aventure also takes exception to the Joint Petitioners' claim that it withdrew its previous interstate tariff filing, FCC Tariff No. 2 submitted in Transmittal No. 2, after the Joint Petitioners "demonstrated" that the tariff violated the Communications Act and the Commission's rules. *Joint Petition, p. 1 and 4.* The Joint Petitioners failed to demonstrate any violations of the Communications Act or the Commission's rules and the Commission did not issue an order that made any such finding.

Regarding the substance of the Joint Petitioners' opposition to the Transmittal, the main arguments are ones with which the Commission is now intimately familiar, and which it has rejected on at least five occasions in the past few months. At a minimum, similar objections have been filed by one or more of the Joint Petitioners with respect to Northern Valley Communications, LLC, Tariff No. 3; Bluegrass Telephone Company, LLC d/b/a Kentucky Telephone Company, Tariff No. 2 and Tariff No. 3; Tekstar Communications, Inc. Tariff No. 2; and Comity Communications, LLC, Tariff No. 1. On each occasion, they argued that the tariff was inherently and patently unlawful, only because the tariff made clear that the IXCs could no longer engage in unlawful self help by refusing to pay for traffic that they were delivering to LECs. Sprint has also argued repeatedly, as the Joint Petitioners do again here, that a provision requiring IXCs

to reimburse LECs for reasonable attorneys' fees in the event that the IXCs continued to engage in prohibited withholdings is patently unlawful.

On three different occasions,[2] the Wireline Competition Bureau released a Public Notice concluding that theses objections were then, as they are now, simply unfounded. Specifically, the Bureau stated:

> Based on this review, we conclude that the parties filing petitions against the tariff transmittals listed in this Report have not presented compelling arguments that these transmittals are so patently unlawful as to require rejection. Similarly, we conclude the parties have not presented issues regarding the transmittals that raise significant questions of lawfulness that require investigation of the tariff transmittals listed in this Report.

See Public Notice, Protested Tariff Transmittal Action Taken, WCB/Pricing File No. 10-08, DA 10-1783 (Sept. 20, 2010) (rejecting Sprint's argument regarding Kentucky Telephone Tariff No. 2); Public Notice, Protested Tariff Transmittal Action Taken, WCB/Pricing File No. 10-09, DA 10-1917 (Oct. 6, 2010) (rejecting Sprint's arguments regarding Tekstar's tariff); and Public Notice, Protested Tariff Transmittal Action Taken, WCB/Pricing File No. 10-10, DA 10-1970 (Oct. 14, 2010) (rejecting Sprint's argument regarding Kentucky Telephone Tariff No. 3).

The Joint Petitioners infer that the Wireline Competition Bureau was wrong to reject the same arguments made in protest of those previously filed tariff transmittals, and should correct their past errors now by rejecting Aventure's filing:

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[2] Northern Valley's Tariff was allowed to go into effect without suspension, but the Commission did not issue a public notice.

> Two (or more) wrongs do not make a right. The Commission should now make clear that these types of tariff filings are patently unlawful, and to send a message to Aventure and other LECs that continue to abuse the access charge rules...By rejecting Aventure's tariff or, at a minimum, suspending and investigating it, the Bureau can send a strong message here that the Commission will not tolerate such misconduct. *Joint Petition, pp. 5-6.*

Notwithstanding the fact that Aventure has not engaged in any "misconduct," the Joint Petitioners are suggesting that the Commission completely ignore the concept of precedent and single out Aventure for punishment for some alleged abuse that it has not committed. Their proposal to correct what they allege are previous "wrongs" by the Bureau by rejecting Aventure's tariff with comparable provisions in order to "send a message" is patently inconsistent with long-established regulatory principles of nondiscriminatory treatment of similarly situated carriers and cannot be seriously considered by the Bureau.

To the contrary, the Bureau should again reject these spurious arguments and permit the tariff to go into effect. As the Joint Petitioners themselves point out, Aventure's Tariff No. 3 mirrors the access rates of the competing ILECs *(Joint Petition*, p. 8) and thus complies with the Commission's rules regarding CLEC access tariffs. The Joint Petitioners' unsubstantiated contention that somehow Aventure's switched access functionality is not equivalent to that provided by the underlying ILECs is simply wrong.

DISCUSSION

I. THE TARIFF'S DEFINITIONS ARE CLEAR AND COMPORT WITH FEDERAL LAW

The gist of Joint Petitioners' argument is that Aventure is not permitted to define its own access services. This argument lacks merit, because the definitions about which they complain (primarily the definition of "end user") have been included in substantially the same form in other tariffs that have been deemed lawful by the Commissions; for instance, in the recent Bluegrass Telephone Company, LLC d/b/a Kentucky Telephone Company Tariff No. 3.

Moreover, despite the Joint Petitioners' unsubstantiated contentions to the contrary, the access services that Aventure will provide under its Tariff No. 3 are functionally equivalent to the access services provided by ILECs. Aventure's tariff includes precisely the same rate elements as the underlying ILEC tariffs. There is nothing in the Commission's rules or decisions that require or even imply that a CLEC's tariff definitions must mirror those of the underlying ILEC, only that the tariffed rates for functionally equivalent services not exceed the corresponding ILEC rate. Aventure is providing a service that originates and terminates long distance calls from and to end users using switching and transport facilities that are functionally equivalent to those of an ILEC. If the ILEC in Aventure's territory provided those same originating and/or terminating services to an IXC, it would charge the same rates as Aventure proposes.

The Joint Petitioners' arguments regarding the definitions in Aventure's Tariff No. 3 also contravene the Commission's reasoning throughout *Farmers &*

Merchants, in which it stated repeatedly that the question of whether traffic is compensable is answered in Farmers' access tariff, and not in precedent arising from investigations of completely different carriers. To determine whether calls placed to Farmers' conference bridge customers generated compensable terminating access, the Enforcement Bureau and the Commission read Farmers' access tariff. *Farmers I*, 22 FCC Rcd. at 17988-89 ¶¶ 36-38. They read the definition of "end user" and "customer" in that tariff, and to assist in their interpretation they read a standard dictionary. *Id.*, 22 FCC Rcd. at 17988 ¶ 38 (quoting *Webster's New Collegiate Dictionary* 1152 (1981)). The Bureau and the Commission did not seek answers in previous orders regarding other LECs' tariffs, because the sole question was whether "Farmers' access charges have been imposed in accordance with its tariff." *Id.*, 22 FCC Rcd. at 17988 ¶ 35.

Later, in stating that the holding of *Farmers I* was under reconsideration, the Enforcement Bureau and the Commission again emphasized that the question under review was whether the calls at issue qualified for terminating access "'under Farmers' tariff.'" *Farmers II*, 23 FCC Rcd. at 1617 ¶ 7 (quoting *Farmers I*). And in the subsequent Commission order, the analysis was confined to "the tariff language at issue here," and "the services described in the tariff." *Farmers III*, 24 FCC Rcd. at 14807 ¶ 15, at 14810 ¶ 22. Neither the Bureau nor the Commission stepped outside the terms of Farmers' access tariff to decide how to characterize the call traffic.

Simply put, the Joint Petitioners are obviously displeased that Aventure's access tariff acknowledges the hyper-semantic litigation tactics that IXCs have

employed as a means to try to avoid paying for lawfully tariffed access services. These definitions are included in Aventure's tariff in an effort to avoid addressing, over and over, the lengthy and convoluted "gotcha" arguments that the Joint Petitioners bring to court while refusing to pay for the use of the LEC's networks.

II. THE TARIFF'S ATTORNEYS' FEES PROVISION IS LAWFUL AND APPROPRIATE

The Joint Petitioners argue that the Transmittal's inclusion of an attorneys' fees provision is patently unlawful (*Joint Petition, p. 14*), but offers no relevant legal support for this argument. In fact, the Commission recently rejected Sprint's opposition to Transmittal No. 3 filed by Comity Communications LLC, which included a similar attorneys' fees provision; that provision has thus been deemed lawful by the Commission's decision and by effect of § 204(a)(3) of the Communications Act.

An attorneys' fees provision is especially appropriate in Aventure's tariff, where IXCs such as AT&T, Qwest and Sprint have predetermined that all of Aventure's access traffic is the result of traffic pumping or traffic stimulation "schemes," irrespective of which customers the traffic terminates to. These carriers have repeatedly proven that they are content to withhold payment from any carrier they can brand with the pejorative "traffic pumper" label. These large, well-financed carriers have apparently decided that it is good for business to exert economic pressure on small, competitive carriers by violating long-standing precedent, and simply withholding access payments for any and all traffic. An

attorneys' fee provision may not stop them from continuing their unlawful behavior, but it will help to prevent small carriers from being forced out of business merely for asserting their legal rights to payment. As with each of the fallacious arguments asserted by various IXCs these past few months, the attorneys' fees provision provides no basis to suspend or reject the Transmittal.

III. THE TARIFF'S DISPUTE RESOLUTION PROVISION IS LAWFUL AND APPROPRIATE

The Joint Petitioners also contend that the dispute resolution provisions included in the tariff, including the requirement for customers to pay all disputed bills and to waive the right to challenge a bill unless it is formally disputed within 90 days, are "patently unlawful."[3] *Joint Petition, p. 14.* However, the Commission has recently rejected the same protests of identical dispute resolution provisions in the Bluegrass Tariff No. 3 filing, resulting in those provisions being deemed lawful under §204(a)(3) of the Communications Act. Similar provisions were also contained in Comity Communications, LLC Tariff No. 1, Transmittal No. 1, which was also filed under the provisions of §204(a)(3) and deemed lawful on the effective date of July 13, 2010. Accordingly, there is no basis and it would unfairly discriminate against Aventure for the Commission to now reverse course and conclude that these same provisions are now unlawful.

[3] One of the Joint Petitioners' complaints about the dispute resolution provision is that it allegedly "purports to make Aventure the sole judge of whether any dispute has merit." (Joint Petition, p. 16) The Joint Petitioners reference §2.104(D) of Aventure's Tariff No. 3. While this language was included in Aventure's proposed Tariff No. 2, which it subsequently withdrew before becoming effective, in an effort to mitigate some of the concerns previously raised in protest of that filing, Aventure removed that language and it is not included in Tariff No. 3.

IV. THE TARIFF'S CUSTOMER DEPOSIT PROVISION IS LAWFUL AND APPROPRIATE

The Joint Petitioners argue that the provision in Aventure's tariff which describes the circumstances under which Aventure may require a customer deposit is "patently unlawful," primarily because they are not sufficiently "tailored" to address "specific risks of nonpayment and to eliminate broad authority to require deposits without objective criteria." *Joint Petition, p. 18.* Yet, the Commission has allowed other access tariffs to become effective under the "deemed lawful" provisions of §204(a)(3) with deposit language that is far less precise and "tailored" than that included in the Aventure tariff. For instance, both Bluegrass Tariff No. 3 and Comity Tariff No. 1 simply state with respect to customer deposits: "To safeguard its interests, the Company may require a Buyer to make a deposit to be held as a guarantee for the payment of charges." (See Comity Tariff No. 1, Section 3.1.5.1 and Bluegrass Tariff No. 3.1.5.1). Those tariffs include no description of the circumstances under which the companies might request a customer deposit. Aventure's tariff provides more precision by adding that: "A deposit may be required if the Customer's financial condition is not acceptable to the Company or is not a matter of general knowledge." The Commission cannot agree with the Joint Petitioners' contention that Aventure's tariff provision is unlawfully vague, when it is actually more specific than language that has previously been deemed lawful.

CONCLUSION

For the reasons stated above, the Bureau should conclude that the Joint Petitioners' arguments are without merit and that their request to reject or suspend Aventure Tariff No. 3, Transmittal No. 4 is unfounded. The tariff filed made by

Aventure should be allowed to become effective as filed as of 12:01 am Eastern on December 30, 2010.

Dated: December 23, 2010

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, Sharon Thomas, hereby certify that on this 23rd day of December, 2010, I caused a true and correct copy of the foregoing AVENTURE COMMUNICATION TECHNOLOGY, L.L.C..'S RESPONSE TO JOINT PETITION OF AT&T, QWEST, SPRINT, T-MOBILE, AND VERIZON TO REJECT OR, IN THE ALTERNATIVE, TO SUSPEND AND INVESTIGATE AVENTURE'S TARIFF F.C.C. NO. 3 to be served on the following parties:

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