

**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)	Docket No. TC11-010
Aventure Communications for Approval of)	
its Switched Access Services Tariff No. 3)	
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**VERIZON'S RESPONSE IN SUPPORT OF
AT&T'S MOTION FOR SUMMARY JUDGMENT**

Verizon¹ hereby submits its response in support of AT&T's Motion for Summary Judgment to Declare Aventure's Revised Access Tariff to Be Unlawful ("AT&T's Motion"). For the reasons set forth in AT&T's Motion, the Commission should reject the tariff filed by Aventure Communication Technology, L.L.C. ("Aventure") as a matter of law.

As AT&T explained in its Motion, this is not a case of a competitive local exchange carrier ("CLEC") that serves traditional residential and business customers in South Dakota deciding to file a revised tariff to "provide greater consistency in the terms and conditions associated with its provision of interstate and intrastate access."² To the contrary, rather than conduct itself as a *bona fide* CLEC providing competitive services to residential and business customers, Aventure's primary – and, at times, only – business has been an arbitrage scheme known as "traffic pumping." Indeed, Aventure currently does not provide any services at all in

¹ As used herein, "Verizon" refers collectively to MCI Communications Services, Inc. d/b/a Verizon Business Services and Celco Partnership and its subsidiaries providing wireless services in the state of South Dakota, collectively d/b/a Verizon Wireless.

² AT&T Motion at 1 (quoting Letter of S. Thomas, Consultant to Aventure, to P. Van Gerpen, Exec. Dir., S.D. PUC, at 1 (Mar. 17, 2011)).

South Dakota.³ The only reason for filing a tariff here is to avoid adverse decisions in the other jurisdictions in which it has operated. In particular, both the Federal Communications Commission (“FCC”) and the Iowa Utilities Board (“IUB”) have rejected Aventure’s business practices and/or analogous traffic pumping activities as unlawful.⁴ Aventure’s tariff filing here is nothing more than an attempt to have the Commission unknowingly legitimize those practices in this state.

However, as AT&T set forth in its Motion, in these circumstances, the Commission would be justified in rejecting Aventure’s tariff filing on public policy grounds. The FCC and other state commissions have recognized that traffic pumping “imposes undue costs on consumers, inefficiently divert[s] the flow of capital from more productive uses,” and “harms competition.”⁵ Accordingly, as a matter of public interest, the Commission should not tolerate Aventure’s efforts to expand its traffic pumping into South Dakota.

In addition, as AT&T explains, there are at least two sets of provisions in Aventure’s proposed tariff that are unlawful on their face.⁶ Aventure proposes a definition of “End User”

³ See *Aventure Communication Technology, L.L.C.’s Resistance to Motion to Intervene and Request to Open an Investigation and Suspend Tariff during the Investigation* at 1 (“Currently Aventure has no customers or telephone traffic in South Dakota.”).

⁴ See, e.g., *Qwest Communications Corp. v. Farmers and Merchants Mutual Tel. Co.*, 24 FCC Rcd 14801 (*Second Order on Reconsideration*) (2009), *recon. den’d and clarifying*, 25 FCC Rcd 3422 (2010); *Qwest Communications Corp. v. Superior Tel. Coop.*, 2009 WL 3052208, Docket No. FCU-07-2, Final Order (Iowa Utilities Bd., Sept. 21, 2009), *recon. den’d*, 2011 WL 459685 (Iowa Utilities Bd., Feb. 4, 2011) (“*IUB Order*”).

⁵ *In the Matter of the Connect America Fund*, 26 FCC Rcd. 4554, ¶ 637 (2011); *IUB Order* at **26-27; *In the Matter of the Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American to Operate as a Competitive Local Exchange Carrier within the State of Utah*, Docket No. 08-2469-01, Report & Order (P.S.C. of Utah, Apr. 26, 2010).

⁶ See AT&T Motion at 10. In addition, as AT&T points out, the Commission also would be required to reject Aventure’s tariff because Aventure cannot demonstrate that its proposed intrastate switched access rates would provide it with a “reasonable” rate of return or otherwise are “fair and reasonable,” as required by statute. *Id.* at 3. Qwest Communications Company (“Qwest”) also identified numerous objectionable tariff provisions in its motion to intervene in this proceeding and to suspend Aventure’s

that the FCC already has found to be unlawful and that conflicts with this Commission's rules.⁷ Aventure also proposes unfair billing dispute resolution provisions that conflict with the Commission's rules and with federal court decisions.⁸ Both of these sets of provisions are facially unlawful.

Accordingly, for the reasons set forth in AT&T's Motion, the Commission should reject Aventure's tariff filing as a matter of law.

Dated July 14, 2011.

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tariff. *See* Qwest Communication Company's Motion to Intervene and Requests to Open an Investigation and Suspend Tariff during the Investigation at 3-8.

⁷ AT&T Motion at 10-14.

⁸ *Id.* at 14-18.

CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 14 day of July 2011, he electronically filed or mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above captioned action to the following at their last known addresses:

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A handwritten signature in black ink, appearing to read "Brett Koenecke", written in a cursive style.

BRETT KOENECKE