



Qwest
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone 303-383-6650
Facsimile 303-896-1107

Robert B. McKenna
Associate General Counsel

March 21, 2008

Electronic Filing via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matters of Establishing Just and Reasonable Rates for Local Exchange Carriers and Developing a Unified Intercarrier Compensation Regime -- WC Docket No. 07-135 and CC Docket No. 01-92*

Dear Ms. Dortch:

On March 20, 2008, Qwest Communications International Inc. ("Qwest") filed via the FCC's Electronic Comment Filing System an Opposition to the Motion of FreeConferenceCall.com to consolidate the above-captioned dockets. In its Opposition, Qwest refers to FCC actions in the formal complaint of *Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company*, File No. EB-07-MD-001. By today's submission, counsel for Farmers and Merchants Mutual Telephone Company, James U. Troup of Venable LLP, is being served via e-mail and U.S. Mail with a copy of Qwest's March 20th Opposition as indicated in the enclosed certificate of service.

Please contact the undersigned if you have any questions concerning this submission.

Sincerely,

/s/ Robert B. McKenna

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
and)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

**OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.
TO MOTION TO CONSOLIDATE DOCKETS**

Qwest Communications International Inc. (“Qwest”) hereby submits this opposition to a March 10, 2008 Motion by FreeConferenceCall.com (“Freeconference”) to consolidate the Federal Communications Commission’s (“Commission”) recent docket dealing with “access stimulation” by some rural incumbent local exchange carriers (“ILECs”) and competitive local exchange carriers (“CLECs”) with the long-standing docket on comprehensive intercarrier compensation reform.

Freeconference argues that, because long term intercarrier compensation reform has the potential to resolve many if not all of the issues raised by access stimulation, the two dockets ought to be consolidated. Freeconference is a “Free Service Provider” who maintains its business through kickbacks received from rural local exchange carriers (“LECs”) based on

access traffic stimulated through their switches.¹ It appears that the primary objection that Freeconference has to consideration of the docket is a disagreement with its presumed result.²

The underlying premise of Freeconference's Motion is suspect. There is no reason why the Commission should delay resolving an issue of critical importance until it is able to simultaneously resolve all other related and potentially related issues at the same time. The Commission has the authority to control its own dockets, and has discretion "to defer consideration of particular issues to future proceedings when it thinks that doing so would be conducive to the efficient dispatch of business and the ends of justice."³ The only time that the Commission's discretion to defer resolution of issues raised in a rulemaking is constricted is when the issues actually being decided are "inextricably related to the issues deferred."⁴ In the case of access stimulation, while all matters of the financial relationships between interconnecting carriers are at least somewhat related to the larger intercarrier compensation docket, the particular issues raised by access stimulation (unreasonable and unlawful tariff access rates and unreasonable billing for non-access traffic) are not inextricably intertwined with the intercarrier compensation docket.

The Commission routinely opens new dockets to address discrete subsidiary issues that might arguably fall within the ambit of a broader pending proceeding. This practice promotes efficient resolution of severable issues, and also ensures that broader rulemakings are not encumbered by innumerable issues that are "related," but not inextricably linked, to the broader

¹ See Comments of Qwest Communications International Inc., WC Docket No. 07-135, filed Dec. 17, 2007, Exhibit B, Tardiff Declaration.

² "The Notice of Proposed Rulemaking in WC 07-135 proposes radically increased regulatory burdens and uncertainty on small carriers such as RLECS and CLECs..." Motion at 2.

³ *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 588 (D.C. Cir. 2004) (subsequent case history omitted).

⁴ *ITT World Communications, Inc. v. FCC*, 725 F.2d 732, 754 (D.C. Cir. 1984).

docket's core concerns. Thus, for example, the Commission has opened (and in some cases, resolved) new dockets addressing the access-charge obligations of calling-card service providers (WC Docket No. 05-68) and providers using Internet protocol transmission (WC Docket No. 02-361), as well as a new docket addressing special access rates (WC Docket No. 05-25), notwithstanding the ongoing "fundamental re-examination of all currently regulated forms of intercarrier compensation" in the Comprehensive Reform Proceeding.⁵ Similarly, the Commission has established separate dockets to address the E911 and number portability obligations of interconnected Voice over Internet Protocol providers (WC Docket Nos. 05-196, 07-243), notwithstanding the inclusion of such issues in its broader *IP-Enabled Services* proceeding (WC Docket No. 04-36).⁶ The Commission has rightly chosen to follow this path here as well.⁷

Moreover, there is a very real need to proceed with great dispatch in dealing with access stimulation, as the access stimulation problem represents a distinct and current threat to the national telecommunications infrastructure. In fact, in addition to the pending notice of proposed

⁵ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9611 ¶ 1 (2001) ("Comprehensive Reform NPRM").

⁶ *See In the Matter of IP-Enabled Services*, 19 FCC Rcd 4863, 4914 ¶ 76 (numbering), 4897-901 ¶¶ 51-57 (E911) (2004).

⁷ It is true, as Qwest noted in its Access Stimulation Proceeding comments, that certain outcomes in the Comprehensive Reform Proceeding would obviate the need for action in the Access Stimulation Proceeding. *See Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Comments of Qwest Communications International Inc. at 31, note 1, *supra*. If the Commission were to eliminate access payments altogether, that approach would moot prior decisions regarding access payments, including decisions meant to prevent access stimulation. The key question here, though, is not whether some future action in a generic rulemaking docket might render action on a more discrete issue unnecessary; presumably, not even Freeconference would suggest that the Commission should relinquish its current oversight over interstate access payments on the basis that it might, at some time in the future, abolish such charges. Rather, the key question is whether the Commission can take action in the more discrete proceeding prior to resolving issues pending in the broader docket. Here, it can, and it should.

rulemaking on access stimulation, the Commission has already, in the course of the last 12 months, issued a ruling finding that the access stimulation practices of a LEC resulted in unlawful and unreasonable rates,⁸ issued a series of tariff orders directed at examining the tariffs of access stimulating LECs leaving the NECA pool,⁹ and issued a declaratory ruling aimed at preserving certain key aspects of the status quo pending finding a solution to the access stimulation threat.¹⁰ There is every reason to resolve access stimulation quickly, and not to delay resolution while the massive challenges relating to intercarrier compensation are addressed.

To this point, a key component of the Freeconference argument is the allegation that the extremely high access charges that are the lynchpin of the access stimulation scheme are the “reasonable and customary charges” for access service. In point of fact, this allegation is not correct. The charges assessed by access stimulating LECs are far from reasonable and lawful. Indeed, in the one detailed examination of rates charged by a LEC engaged in access stimulation, the Commission not only found that the rates charged by the offending carrier were unlawful because they “vastly exceeded the prescribed rate of return,”¹¹ but that this unlawfulness was part of a scheme whereby the carrier “manipulated the Commission’s rules to achieve a result unintended by the rules. . . .”¹² The rates proposed by prospective rural ILEC actors in the access

⁸ *In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company*, Memorandum Opinion and Order, 22 FCC Rcd 17973 (2007) (“Farmers and Merchants”), Order on Reconsideration, 23 FCC Rcd 1615 (2008).

⁹ *In the Matter of July 1, 2007 Annual Access Charge Tariff Filings*, Order, 22 FCC Rcd 11619 (2007); *In the Matter of Investigation of Certain 2007 Annual Access Tariffs, Order Designating Issues for Investigation*, 22 FCC Rcd 16109 (2007); *In the Matter of Investigation of Certain 2007 Annual Access Tariffs*, Order, 22 FCC Rcd 21261 (2007).

¹⁰ *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 (2007).

¹¹ *Farmers and Merchants*, 22 FCC Rcd at 17983 ¶ 25.

¹² *Id.* at 17984 ¶ 27.

stimulation scheme were able to avoid scrutiny only when these carriers rejoined the NECA pool rather than allow for such scrutiny.¹³ Indeed, the entire premise of the access stimulation problem is that rural LECs are able to charge very high access rates predicated on the assumption that volumes will be low, and then create sharing opportunities by artificially stimulating additional traffic that increases revenues exponentially more rapidly than it increases costs.¹⁴

As has been pointed out in recent *ex parte* presentations,¹⁵ access stimulation is a problem that is not diminishing even in the teeth of the Commission actions described above. Instead, the problem seems to be shifting from ILECs to CLECs.¹⁶ Because CLECs are subject to different rules than are ILECs, the interim solutions that the Commission has applied in dealing with ILECs are not likely to have the same impact on CLEC access stimulation -- which means that it remains critical that the Commission act now to deal decisively with access stimulation.

Including the access stimulation issues in the intercarrier compensation docket would only serve to delay resolution of the critical issues posed by access stimulation, thereby compounding the multiple threats that access stimulation poses to the national telecommunications infrastructure.

The Freeconference motion must be denied and the Commission should move rapidly to issue a comprehensive order in the access stimulation docket.

¹³ See note 9, *supra*, including *Order Designating Issues for Investigation*, 22 FCC Rcd 16109.

¹⁴ Declaration of Peter B. Copeland, *In the Matter of Qwest Communications Corporation, Complainant, v. Farmers and Merchants Mutual Telephone Company, Defendant.*, in File No. EB-07-MD-001, filed in WC Docket No. 07-135, Nov. 30, 2007.

¹⁵ *Qwest ex parte*, WC Docket No. 07-135, dated Mar. 7, 2008, *AT&T ex parte*, WC Docket No. 07-135, dated Mar. 11, 2008, *Verizon ex parte*, WC Docket No. 07-135, dated Mar. 14, 2008.

¹⁶ *Id.*

Respectfully submitted

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: /s/ Robert B. McKenna
Craig J. Brown
Robert B. McKenna
Tiffany West Smink
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6650

Its Attorneys

March 20, 2008

CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC. TO MOTION TO CONSOLIDATE DOCKETS** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 07-135 and CC Docket No. 01-92; 2) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com; and 3) served on Counsel for FreeConferenceCall.com via First Class United States Mail, postage prepaid, at the following address:

Ross A. Buntrock
Danielle M. Benoit
Womble Carlyle Sandridge & Rice, PLLC
Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

/s/Eileen Kraus

March 20, 2008

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **LETTER**, enclosing a copy of the Opposition of Qwest Communications International Inc. to Motion to Consolidate Dockets, filed with the FCC on March 20, 2008 in WC Docket No. 07-135 and CC Docket No. 01-92, to be served on Counsel for Farmers and Merchants Mutual Telephone Company via electronic mail and First Class United States Mail, postage prepaid, as follows:

James U. Troup
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20004-1604

jtroup@venable.com

/s/ Ross Dino

March 21, 2008