

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of the Federal-State)
Joint Board on Universal Service) CC Docket No. 96-45
)
Aventure Communication Technology, LLC)
Petition for Waiver of Sections 54.307(c))
and 54.802 of the Commission's Rules)

**OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.
TO AVENTURE'S PETITION FOR WAIVER**

Qwest Communications International Inc. ("Qwest") submits its opposition to Aventure Communication Technology, LLC's ("Aventure") Petition for Waiver in the above-referenced docket.¹

The Aventure Petition presents an important insight into the issue of access stimulation currently under investigation in the recent access stimulation docket (in addition to a number of other dockets).² Aventure, a competitive local exchange carrier ("CLEC") whose chief business is partnering with free calling service providers in order to pump massive amounts of traffic through its switch, appears to also have figured out a way to manipulate the universal service rules. That is, in addition to abusing the rural switched access rate structures and charging interexchange carriers ("IXCs") tens of millions in inflated switched access fees for service that the IXCs do not desire, Aventure is also targeting the Universal Service Fund (or "USF") program designed to ensure that universal service is available to all Americans. While Aventure has presented no sound basis upon which to receive a waiver of the universal service filing rules, its petition raises a larger question -- under what conceivable circumstances should universal service funding be utilized to support access stimulation schemes? In addition to denying the

¹ Aventure Petition for Waiver filed Feb. 11, 2008. *And see* Public Notice, DA 08-479, rel. Feb. 28, 2008.

² *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd 17989 (2007).

Aventure waiver Petition, it is imperative that the Federal Communications Commission (“Commission”) move quickly to prevent further abuses of the universal service structure.

I. BACKGROUND.

Aventure claims to be a rural CLEC.³ Its current rates are benchmarked to the National Exchange Carrier Association (“NECA”) rates and, with mileage, Qwest is currently billed \$0.0667 per minute of use for interstate switched access.⁴ In its Petition Aventure asserts that it is engaged in the business of serving residential customers in rural areas where it provides the only choice of telecommunications carriers, and that it needs universal service support in the neighborhood of \$3.2 million. However, Aventure missed the deadline for filing to collect universal service support for the second quarter of 2008. In its Petition it seeks to have the filing rules waived so that it can collect approximately \$800,000 in universal service funding.

As described herein, Aventure has not made any case to support a waiver of the Commission’s rules, and its Petition should be denied. Moreover, as detailed herein, Aventure’s filing reveals that it is highly likely that it is not entitled to universal service funding at all, and that the Commission should initiate an immediate investigation to determine whether Aventure’s service (and its representations to the Commission) warrant excluding it from all universal service funding in the future.

³ See Aventure Communication Technology LLC, FCC 1 Interstate Access tariff, title page where Aventure claims that service is available in two locations, Sloan and Salix IA. Both of these are located in the territory of Northwest Iowa Telephone. Aventure charges the rates set forth in the NECA tariff:

The rates and charges for the switched access service offered in this tariff are the same as those set forth in the National Exchange Carrier Association, inc. Tariff FCC No. 5 for the rate elements listed below, assuming the highest rate band for local switching and the transport interconnection charge.

Aventure Communication Technology LLC, FCC 1 Interstate Access tariff, Section 3.8 (original page 55).

⁴ Based on billings to Qwest.

II. THE AVENTURE WAIVER PETITION SHOULD BE DENIED.

Aventure is one of the premier “access stimulators” whose activities are under scrutiny in WC Docket No. 07-135.⁵ It is not bashful about its status as an access stimulator, and has filed comments with the Commission vigorously defending the practice and opposing Commission efforts to deal with the access stimulation problem.⁶ The instant waiver Petition brings to light a new wrinkle on the access stimulation proceeding -- Aventure has figured out a way to claim over \$3 million per year from the Universal Service Fund. The instant waiver Petition was filed because Aventure did not prepare and file the necessary forms in a timely manner. As is described herein, Aventure has presented no basis for a grant of the waiver that it seeks.

Initially, Aventure missed the deadline for filing line counts for which it claims universal service support, hence the requested waiver of the time deadlines. Then it claims that it accidentally reported its access stimulation revenues as end-user revenues, causing the Universal Service Administrative Company (“USAC”) to assess considerably higher USF contribution requirements on Aventure than would have been due only on what Aventure claims are the proper interstate end-user revenues. This error in turn caused Aventure to file an “Emergency Request for Review and Request for Waiver of USAC 45 Day Revision Deadline” on March 6, 2008 in CC Docket No. 96-45 (“Emergency Request”).⁷ This “Emergency Request” seeks to revise the projected revenues outside the time deadlines established by the USAC for such revisions.

⁵ See note 2, *supra*.

⁶ See Comments of Aventure Communication Technology, L.L.C. in WC Docket No. 07-135, (undated but presumably filed Dec. 12, 2007), Reply Comments of All American Telephone Co. Inc., Aventure Communications, Great Lakes Communications and OmniTel Communications in the same docket, filed Jan. 16, 2008.

⁷ This “Emergency Request” has not been publicly noticed by the Commission. To the extent that the Commission plans to consider that filing without public notice, for the reasons stated herein, Qwest opposes its grant.

Qwest submits that it is contrary to the public interest for Aventure to receive any USF support at all, far less that it be permitted to do so without compliance with the Commission's procedural rules. Basically, Aventure contends that it needs the money, that it is "good actor" and that failure to give universal service dollars to Aventure for the period would "unduly punish . . . its end user customers."⁸ Its claim for sympathy seems to be predicated on its "mission," which it states is as follows:

Finally, Aventure's mission is to bring sophisticated telephone services and broadband Internet access to underserved rural customers in Iowa, South Dakota, and Nebraska. For most of these customers, Aventure is the only alternative to the incumbent provider.⁹

As detailed below, Aventure is a far cry from a "good actor," and it is not clear that it has any bona fide end-user customers. Moreover, the claim that it is the sole source of competition in the rural areas where it provides service is undercut by the Commission's own records. The two incumbent local exchange carrier ("ILEC") areas in which Aventure claims to be the only alternative to the ILEC are Northwest Iowa Telephone Company territory and Western Iowa Telephone Association territory.¹⁰ The most recent Form HC 18 (CTC Reported Lines by Study Area) shows three CETCs in addition to Aventure in Northwest Iowa and five CETCs in addition to Aventure in Western Iowa.¹¹ In other words, Aventure is decidedly not the only source of telecommunications competition in these rural areas. Far from it.

In point of fact, Aventure exists solely, or chiefly, as an access stimulator. It has shown no cause for waiver in order to receive the universal service funds that it claims. Assuming that

⁸ Aventure Petition at 4, 7.

⁹ See Letter to Marlene Dortch, Secretary, from Jonathan Canis and Jennifer Kashatus, counsel for Aventure, dated Feb. 27, 2008 at 2 ("Feb. 27 Letter").

¹⁰ Aventure is certified as a competitive eligible telecommunications carrier ("CETC") in both of these territories. As far as we can determine it actually claims to provide service in the territory of Northwest Iowa.

¹¹ <http://www.usac.org/about/governance/fcc-filings/2008/Q1/HC18%20-%20CETC%20Reported%20Lines%20by%20Incumbent%20Study%20Area%20-%20High%20Cost%20Loop%20Support%20-%201Q2008.xls>

Aventure might have some putative legal right to plunder the USF (*see* below), the very least it can do is get its documents in on time (and fill them out correctly). No good cause has been shown for allowing Aventure to obtain the universal service funds sought by the Petition. The Petition must be denied.

Of greater significance, as is discussed below, the public interest is not served by allowing Aventure to claim universal service funding, even if it complies with the existing rules governing universal service support. The Commission should act expeditiously to ensure that the rules do not enable the universal service system to support access stimulation schemes -- to the extent that the rules can be read to permit such support now. It is contrary to the public interest to use universal service funding to support access stimulation in general. Moreover, while the facts are relatively sparse, there is sufficient apparent conflict between Aventure's claims to be serving rural residential customers and the realities of the forms that have been submitted in this proceeding and elsewhere to warrant further examination of Aventure's right to receive universal service support under any interpretation of the rules.

III. AVENTURE'S SERVICE CLAIMS.

In support of its Petition, Aventure asserts that it "provides residential telephone service to rural and underserved areas in Iowa and South Dakota,"¹² that it "depends upon the high-cost funds to provide service to its end user customers in high-cost, rural areas"¹³ and that it "relies on this money . . . to be able to build out its network to serve future customers."¹⁴ Aventure has been a CETC in Iowa since March 6, 2006, and asserts that it will be "detrimentally affected"

¹² Aventure Petition at 1.

¹³ *Id.*

¹⁴ *Id.* at 4.

unless it receives the second quarter high-cost support that it anticipates would be at least \$800,000.¹⁵

Subsequent to the filing of its Petition, Aventure also sought a waiver of the USAC's 45-day revision deadline for Form 499 filings so that it could correct an error in the amount of projected revenue it reported on its last quarterly FCC Form 499-Q filing for 2007.¹⁶ Aventure therein continued its theme that it "provides telephone service to consumers predominantly located in rural and underserved areas in Iowa and South Dakota."¹⁷

Aventure further continued along this path in several *ex parte* communications. On February 27, Aventure claimed that "it relies heavily on universal service funds to provide services to its customers in underserved, rural areas,"¹⁸ and that it was the "only alternative to the incumbent provider: for most of these customers."¹⁹ On March 4, 2008, Aventure presented an array of descriptions of the services it allegedly provides to the public, including high speed Internet, "phone service," and the claim that it is "currently providing services to residential and business customers in Salix and Sloan, Iowa."²⁰

In short, one comes away from the various Aventure presentations with the impression that Aventure is a fully functioning rural CLEC offering a wide variety of services to a broad

¹⁵ *Id.* at 4.

¹⁶ Aventure incorrectly projected first quarter 2008 end-user revenues of \$3,000,000 instead of \$135,000. The \$3,000,000 was Aventure's projected total revenues for first quarter 2008. As a result of the error, the USAC has invoiced Aventure for \$91,800 per month for Federal USF contributions for the first quarter of 2008, instead of the \$4,700 per month that Aventure would owe with the corrected end-user revenue amount. Aventure's "Emergency Request" sought the right to revise its projections beyond the date established by USAC for the filing of such revisions.

¹⁷ Emergency Request at 2.

¹⁸ *See* Feb. 27 Letter at 1.

¹⁹ *Id.* at 2. As noted above, this last statement is contradicted by the Commission's own records.

²⁰ *See* Letter to Marlene Dortch, Secretary, from Jonathan Canis and Jennifer Kashatus, counsel for Aventure, dated Mar. 4, 2008, attachment *passim* ("Mar. 4 Letter").

range of residential and business customers. The clear implication is that Aventure has been conducting this business since its inception.

IV. AVENTURE'S UNIVERSAL SERVICE STATISTICS.

Notwithstanding the foregoing representations, other information submitted by Aventure raises questions about the true nature of Aventure's business operations, and whether Aventure is entitled to any universal service support even if it files timely requests therefor. As noted, Aventure is a major access stimulator and, as is the case with most CLECs involved in access stimulation schemes, there has been a question of whether Aventure provides substantial service to anyone outside of their access stimulation partners.²¹ These questions are highlighted by Aventure's filing.

As part of its Petition, Aventure submitted the January 11, 2008 FCC Form 525 that it filed with the USAC. In its line count data as of June 30, 2007, Aventure reported a total of 3,008 lines. Of these 3,008 lines, a total of zero were residential or small business lines. All of Aventure's lines were lines classified as "multi-line business." This is a far cry from the "underserved rural" customers with no alternative to Aventure's service that appear in the Petition and supporting documents.

Further light on the nature of Aventure's business operations is provided by the Emergency Request. In its *ex parte* letter of March 4, 2008, Aventure states that its "collected end user revenues" averaged approximately \$135 thousand per quarter from February 1, 2007-September 30, 2007 (or \$540,000 per year). However, according to its Emergency Request, Aventure accidentally included access revenues (which would include in large measure revenues from its access stimulation activities) in its report for the third quarter of 2007. As a result, Aventure essentially reported that its collected quarterly interstate access revenues were

²¹ See Qwest Comments, WC Docket No. 07-135, filed Dec. 17, 2007 at 8-10.

\$3 million, or \$12 million per year.²² This means that it is probable that Aventure's access stimulation billings were more than 22 times as great as the revenues received from its own customers.²³ In the instant Petition, Aventure requests another \$3.2 million in universal service funding, in itself almost six times the interstate amount received by Aventure from its "customers."

The approach that Aventure advocates looks like this:

AVENTURE CLAIMED INTERSTATE REVENUES

Revenue Source	Annual per line	Monthly per line
Charges to end users (multi-line business users)	\$180	\$15
Charges to IXC's (primarily, if not exclusively, based on access stimulation)	\$3989	\$332
Universal Service Fund Claim	\$1029	\$86
Total	\$5198	\$433

In other words, in the structure advocated by Aventure, less than four percent of its annual interstate revenues would be from its customers -- the remainder would be subsidies, either by IXC's caught in an access stimulation scheme or by the Universal Service Fund.²⁴

V. CONCLUSION.

In conclusion, Aventure has shown no basis for the waiver that it has requested. Its excuses for non-filing are essentially non-existent, and its public interest rationale for its Petition

²² Emergency Request at 2-3. We assume that the \$3 million figure includes access revenues billed but not collected. If Aventure actually collected \$3 million in access revenues for the quarter, and if, as Aventure asserts, "Since November 2006, AT&T and the other large IXC's have refused to pay any of Aventure's access charges," then the amount of access stimulation minutes pumped through Aventure's facilities must be gargantuan. See Mar. 4 Letter, Attachment at 3.

²³ We can find no local or intrastate rates for Aventure's local services.

²⁴ The record reflects that Aventure has received \$391,000 in universal service funding for the year 2007.

waiver is based on assertions and allegations of service that are highly questionable, to put it kindly. Moreover, Aventure has exposed itself as a major access stimulator that should not be eligible for universal service funding in any event. The Commission should deny the Petition and commence an immediate investigation into whether Aventure is entitled to universal service funding in the future.

Respectfully submitted,

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March 31, 2008

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC. TO AVENTURE'S PETITION FOR WAIVER** to be: 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 96-45; 2) served via e-mail on Ms. Jennifer Prime, Telecommunications Access Policy Division, Wireline Competition Bureau at jennifer.prime@fcc.gov; 3) served via e-mail on Mr. David Duarte, Telecommunications Access Policy Division, Wireline Competition Bureau at david.duarte@fcc.gov; 4) served via First Class United States mail, postage prepaid, on the party listed below; and 5) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Eileen Kraus
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March 31, 2008

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