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EX PARTE

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December 4, 2008

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

Re: *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92
In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337
In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68
In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135
In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122

Dear Ms. Dortch:

On November 25, 2008, AT&T, filing jointly with the Rural Independent Competitive Alliance, filed an *ex parte* presentation in this docket suggesting a solution to the competitive local exchange carrier ("CLEC") access stimulation problem.[1] Specifically, AT&T proposed rule changes that would not permit a CLEC with more than 1500 minutes of use/working loop/month to be eligible for classification as a "rural CLEC" under Section 61.26 of the Federal Communications Commission's ("Commission") rules. If a CLEC that benchmarked its rates to the National Exchange Carrier Association ("NECA") rates (*i.e.*, a rural exemption CLEC) exceeded this number of minutes per month in the aggregate, it would need to file new rates benchmarked to the competing non-rural incumbent local exchange carrier ("ILEC"). If a CLEC that benchmarked its rates to a rural ILEC exceeded this traffic level, it would be required to file new tariffs benchmarked to the rates of the nearest Regional Bell Operating Company. AT&T also suggested language for a declaratory ruling to the effect that assessment of access charges for traffic generated as part of a "revenue sharing arrangement" constitutes an "unreasonable practice" under Section 201(b) of the Communications Act.

[1] Letter from Brian Benison and Steve Kraskin to Marlene H. Dortch, CC Docket No. 01-92 and WC Docket No. 07-135, November 25, 2008.

Qwest concurs in the analysis that access stimulation/revenue sharing as defined by AT&T constitutes an unreasonable practice under the Act. Access stimulation involves nothing less than a "manipulat[ion] [of] the Commission's rules to achieve a result unintended by the rules."[2] By divorcing cost causation from the responsibility to pay for costs caused, it is diametrically opposed to any concepts of rational economic behavior and economic efficiency. Qwest agrees with AT&T that the practice should be held to violate Section 201(b) of the Act. In addition, as this practice is marked by unusually high minutes of use per carrier loop, AT&T's suggestion that CLECs be eligible for "rural carrier" status only if their minutes of use per working loop be maintained within reasonable boundaries is reasonable (although, because rural CLECs that do not have eligible telecommunications carrier status do not report the number of working loops they have in service, it might be difficult to enforce this rule in many instances).

For the reasons stated by AT&T in its *ex parte* presentation, the approaches that AT&T puts forth are reasonable methods of approaching access stimulation by rural CLECs. As has been noted on this record, CLEC access stimulation remains a significant problem, one that has not been curtailed by the Commission's substantial strides in addressing access stimulation by ILECs. Declaring that billing for calls that are the subject of a revenue sharing arrangement as defined by AT&T constitutes a violation of Section 201(b) of the Act would go a long way towards resolving the problem. Conditioning rural CLEC status on maintaining minutes of use per working loop within normal limits is also a viable approach to this very serious problem.

Sincerely,

/s/ Melissa E. Newman

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[2] *In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company*, Memorandum Opinion and Order, 22 FCC Rcd 17973, 17983-84 ¶ 27 (2007).