

Melissa E. Newman
Vice President – Federal Relations
Qwest Communications International, Inc.

607 14th Street NW
Suite 950
Washington, DC 20005
202.429.3120



EX PARTE

April 3 2009

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

RE: *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers,*
WC Docket No. 07-135

Dear Ms. Dortch:

Enclosed is a copy of the Initial Brief of the Iowa Consumer Advocate filed with the Iowa Utilities Board on March 31, 2009 in Docket No. FCU-07-2. Please file this document on the record in the above captioned proceeding.

The Iowa Utilities Board proceeding in which this Initial Brief was filed is a broad ranging examination of the “access stimulation” phenomenon before the Federal Communications Commission in the instant docket. Over the course of this proceeding, the Board heard the testimony of dozens of witnesses and reviewed literally thousands of documents concerning all aspects of access stimulation. Despite the interstate nature of much traffic generated by access stimulating LECs and their Free Service Provider partners, Iowa has a significant interest in access stimulation because it is home to approximately 150 independent rural LECs. A small number of these rural Iowa LECs were among the leaders in establishing some of the most elaborate and harmful access stimulation schemes, schemes many of which continue in operation to this day.

The Iowa Office of Consumer Advocate is established by statute as a special representative of the public and consumers within the Iowa Office of Attorney General (Iowa Code, Section 475A). It describes its mission as follows:

The mission of the Office of Consumer Advocate is to represent Iowa consumers and the public interest in all forums with the goal of maintaining safe, reliable, reasonably-priced, and nondiscriminatory utility services for all consumers in all market settings while informing and educating the public on utility related issues.¹

¹ http://www.state.ia.us/government/ag/protecting_utility/mission.html

Marlene H. Dortch
Federal Communications Commission
April 3, 2009
Page 2

The Office of Consumer Advocate concluded that the Free Service Provider partners of the access stimulating LECs were not customers of the LECs, and that the traffic that was being billed to IXC's based on the access stimulation was not legitimate access traffic. Key to the OCA's assessment is the following language:

The record evidence, including some of the testimony of the Respondents' witnesses, demonstrates that Respondents and their FCSC partners were deliberately engaged in fraud to generate phenomenal increases in switched access revenue for Respondents, revenue which Respondents then shared with the FCSCs. Respondents and their FCSC partners deceived the IXC's, and concealed their scheme from the legitimate customers of both the Respondents and the IXC's, and the public generally. Respondents have attempted to deceive the Board.²

The Office of Consumer Advocate recommended to the Iowa Utilities Board that it grant "such additional remedies as are necessary to prohibit and detect the frauds of traffic pumping and traffic laundering,"³

The conclusions reached by the Office of Consumer Advocate in the attached Initial Brief are based on the evaluation of the extensive record evidence. Much of this evidence is not currently available to the parties to this proceeding at the FCC because it was submitted pursuant to protective orders, generally insisted on by the companies engaged in access stimulation activities. Qwest believes that the Commission has the power and the imperative to examine this evidence in a timely fashion in the instant docket. To the extent that Qwest's assistance is useful in obtaining access to this information, Qwest will provide its full cooperation.

Sincerely,

/s/ Melissa Newman

Melissa Newman
Vice President – Federal Regulatory
Qwest Communications International, Inc.

² Initial Brief, p 4.

³ Initial Brief, p. 5.

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

QWEST COMMUNICATIONS
CORPORATION,

Complainant,

v.

SUPERIOR TELEPHONE COOPERATIVE;
THE FARMERS TELEPHONE COMPANY OF
RICEVILLE, IOWA; THE FARMERS &
MERCHANTS MUTUAL TELEPHONE
COMPANY OF WAYLAND, IOWA;
INTERSTATE 35 TELEPHONE COMPANY
d/b/a INTERSTATE COMMUNICATIONS
COMPANY; DIXON TELEPHONE COMPANY;
REASNOR TELEPHONE COMPANY, LLC;
GREAT LAKES COMMUNICATION CORP.;
and AVENTURE COMMUNICATION
TECHNOLOGY, LLC;

Respondents.

DOCKET NO. FCU-07-2

REASNOR TELEPHONE COMPANY, LLC,

Counterclaimant,

v.

QWEST COMMUNICATIONS CORPORATION
AND QWEST CORPORATION,

Counterclaim Respondents.

INITIAL BRIEF OF THE OFFICE OF CONSUMER ADVOCATE

STATEMENT OF THE CASE

On February 20, 2007, Qwest Communications Corporation (QCC) filed with the Utilities Board (Board) a complaint pursuant to Iowa Code §§ 476.2, 476.3, and 476.5; 199 IAC Chapters 4 and 7; and 199 IAC 22.14 alleging violations of the terms, conditions, and application of the intrastate tariffs of the following telecommunications carriers: Superior Telephone Cooperative (Superior); The Farmers Telephone Company of Riceville, Iowa (Farmers–Riceville); The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa (Farmers & Merchants); Interstate 35 Telephone Company, d/b/a Interstate Communications Company (I-35); Dixon Telephone Company (Dixon); Reasnor Telephone Company, LLC (Reasnor); Great Lakes Communications Corp. (Great Lakes); and Aventure Communication Technology, LLC (Aventure) (collectively referred to as Respondents).

QCC alleged the Respondents, together with free calling service companies (FCSCs), were engaging in a fraudulent scheme providing free conference calls, chat rooms, adult content calling, podcasts, voice mail, and international calling services using lines and numbers assigned to the FCSCs by the Respondents. QCC asserted the FCSCs' promotion of free calling services produced exponential increases in the volume of toll traffic delivered by QCC and other interexchange carriers (IXCs) and corresponding exponential increases in terminating switched access charges billed to QCC and other IXCs. QCC alleged the Respondents' paid kickbacks to the FCSCs from the dramatically

increased switched access revenues, thereby enabling the FCSCs to provide their calling services free (or at very low prices.) QCC described the scheme as “traffic pumping.” QCC alleged the Respondents and FCSCs changed telephone numbers frequently to avoid or minimize detection of the dramatic increases in switched access traffic produced by the traffic pumping scheme.

QCC also alleged that the Respondents are charging QCC for terminating calls that are actually terminated outside of the Respondents' local calling areas. And QCC alleged that the Respondents sharing of revenues on a preferential basis with the FCSCs constituted unlawful discrimination against other customers (who do not receive a share of Respondents' revenues.)

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed its appearance on May 2, 2007. Reasnor filed a motion for summary judgment seeking dismissal of QCC's complaint. Other Respondents filed motions to dismiss QCC's based on arguments similar to those made by Reasnor. QCC resisted Respondents' motions seeking dismissal of the complaint. On May 25, 2007, the Board issued its order docketing the complaint. The Board found there were genuine issues of material fact and, therefore, denied summary judgment. The Board also found that it clearly had jurisdiction with respect to intrastate traffic, intrastate switched access tariffs, and local exchange service and tariffs of the Respondents. In its docketing order the

Board established the initial procedural schedule including setting the matter for hearing beginning September 19, 2007.

Subsequently, the Board granted petitions to intervene filed by AT&T Communications of the Midwest, Inc., and TCG Omaha (AT&T), and Sprint Communications Company L.P. (Sprint), IXCs aligned with QCC. Disputes concerning procedure and discovery began even before the Board docketed the complaint. Those disputes necessitated several extensions of the procedural schedule. After the filing of direct and rebuttal testimony and exhibits by QCC, AT&T and Sprint, and direct testimony and exhibits by the Respondents, the hearing was held February 5 – 12, 2009.

ARGUMENT

The OCA concurs in the briefs filed by QCC, AT&T, and Sprint.

The testimony and documentary evidence introduced by QCC, AT&T and Sprint establish beyond any rational dispute: (1) the free calling service companies (FCSCs) were not end-users subscribed to any tariff services of the Respondent local exchange carriers (LECs) and (2) the toll traffic for which the LECs billed the IXCs and shared revenue with the FCSCs did not terminate at the premises of end-users. There is not one piece of credible documentary evidence offered by any of the Respondents to cast even the slightest doubt about these two facts. And these facts are dispositive of the ultimate issue before the Board: The Respondents were not entitled by their tariffs (or any other authority) to charge the IXCs for terminating switched access service for any of the

traffic to the conference bridges owned (or used by) the FCSCs because the FCSCs were not end-users and the traffic did not terminate at the premises of end-users.

The record evidence, including some of the testimony of the Respondents' witnesses, demonstrates that Respondents and their FCSC partners were deliberately engaged in fraud to generate phenomenal increases in switched access revenue for Respondents, revenue which Respondents then shared with the FCSCs. Respondents and their FCSC partners deceived the IXCs, and concealed their scheme from the legitimate customers of both the Respondents and the IXCs, and the public generally. Respondents have attempted to deceive the Board.

Respondents and their FCSCs partners abused the switched access charge system that was created for the express purpose of providing revenue for long distance traffic to help pay the higher costs incurred by local exchange carriers (LECs), such as Respondents, to serve very low density service areas, e.g., small Iowa towns and the surrounding farms.

CONCLUSION

Because the FCSCs were not end-users and did not have local exchange end-user premises, the Respondents billing of IXCs for terminating switched access service for traffic routed to the conference bridges owned or used by the FCSCs constitutes an unreasonable practice in violation of Iowa Code §§ 476.3 and 476.5. The Board should require an accounting by each Respondent of all intrastate switched access charges billed

for traffic to the numbers assigned to the FCSCs. The Respondents should be required to refund to the billed IXC of all the charges that were paid, and credit to the billed IXC of all the charges that were not paid. The Board should grant such additional remedies as are necessary to prohibit and detect the frauds of traffic pumping and traffic laundering, and to impose appropriate sanctions.

Respectfully submitted

John R. Perkins
Consumer Advocate

/s/ Gary D. Stewart
Gary D. Stewart
Attorney

310 Maple Street
Des Moines, IA 50319-0063
Telephone: 515-281-5984
FAX: 515-242-6564
E-Mail: Gary.Stewart@oca.iowa.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following persons and parties in accordance with the rules of the Iowa Utilities Board:

David S. Sather
Qwest Corporation
925 High Street 9 S 9
Des Moines, IA 50309

Lawrence P. McLellan
Sullivan & Ward, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, IA 50266

Charles W. Steese
Sandra L. Potter
Steese & Evans, P.C.
6400 S. Fiddlers Green Circle, Suite 1820
Denver, CO 80111

James U. Troup
Tony S. Lee
Venable LLP
575 7th Street, NW
Washington, D.C. 20004-1601

Thomas G. Fisher, Jr.
Parrish, Kruidenier, Dunn, Boles, Gribble,
Cook, Parrish, Gentry & Fisher, L.L.P.
2910 Grand Avenue
Des Moines, IA 50312

Bret A. Dublinske
Dickinson, Mackaman, Tyler & Hagan, P.C.
699 Walnut Street, Suite 1600
Des Moines, IA 50309

Ross A. Buntrock
Stephanie A. Joyce
Michael B. Hazzard
Womble, Carlyle, Sandridge & Rice, PLLC
1401 Eye Street, NW
Seventh Floor
Washington, DC 20005

Richard W. Lozier, Jr.
Belin, Lamson, McCormick,
Zumbach & Flynn, P.C.
666 Walnut Street, Suite 2000
Des Moines, IA 50309-3989

Robert F. Holz, Jr.
Steven L. Nelson
Davis, Brown, Koehn, Shors & Roberts, P.C.
The Davis Brown Tower
215 10th Street, Suite 1300
Des Moines, IA 50309-3993

Letty S.D. Friesen
AT&T Communications of the Midwest
2535 East 40th Avenue
Suite B1201
Denver, CO 80205

Paul D. Lundberg
Lundberg Law Firm, P.L.C.
600 Fourth Street, Suite 906
Sioux City, IA 51101

Dated this 31st day of March, 2009.

/s/ Gary D. Stewart
Gary D. Stewart