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EX PARTE PRESENTATION

August 3, 2009

VIA ECFS

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

RE: WC Docket No. 07-135, *Establishing Just and Reasonable Rates for Local Exchange Carriers* -- Response to Sancom *Ex Parte* Presentation

Dear Ms. Dortch:

Qwest Communications Company, LLC ("Qwest") hereby files this *ex parte* presentation in the above-captioned docket.

On July 17, 2009, Northern Valley Communications, LLC ("Northern") and Sancom, Inc. (collectively "Sancom" unless otherwise specified) filed an *ex parte* presentation in the instant docket. The Sancom *ex parte* makes a variety of claims regarding the practice of "traffic pumping" and its place in the regulatory universe that merit examination in the context of this rulemaking proceeding. These claims are generally false, in some cases bordering on distortions of the law or regulatory record. We take the opportunity of this *ex parte* presentation to examine Sancom's position in some detail.¹

In addition, Northern and Sancom have pending actions against Qwest in South Dakota seeking to collect access charges for artificially pumped traffic.² Sancom has filed for summary

¹ Qwest has suggested various means of dealing with the traffic pumping problem on the record in this proceeding. *See*, Comments of Qwest Communications International Inc., filed Dec. 17, 2007 at 20-22, 27-29; Reply Comments of Qwest Communications International Inc., filed Jan. 16, 2008 at 16-19; Letter from Melissa Newman, Qwest, to Marlene H. Dortch, Federal Communications Commission, filed Mar. 7, 2008, attachment at 6-8; Letter from Melissa Newman, Qwest, to Marlene H. Dortch, Federal Communications Commission, filed Jan. 6, 2009.

² *Northern Valley Communications LLC v. Qwest Communications Corporation*, Civ. 09-01004; *Sancom, Inc. v. Qwest Communications Company, LLC*, Civ. 07-4147, both filed in the U.S. District Court for the District of South Dakota.

judgment in its lawsuit, and filed a "Notice of Supplemental Authority" in that proceeding that is quite similar to the *ex parte* that it filed with the Federal Communications Commission ("Commission") (attached as Exhibit A hereto).³ The Sancom representations to the South Dakota Court, duplicated in the *ex parte* that it made on July 17, demonstrate the vital importance of rapid and definitive action by the Commission condemning the practice of traffic pumping.

This *ex parte* presentation is divided into two parts. In the first section, entitled "Executive Summary and Introduction," the basic fallacies that pervade the Sancom filings (both in court and before the Commission) are laid out. In the second section, entitled "Discussion," each of these issues is discussed in more detail. The basic point of both sections is the same: Sancom's defense of traffic pumping is predicated on material and fundamental inaccuracies.

I. EXECUTIVE SUMMARY AND INTRODUCTION

1. A critical part of Sancom's analysis is that it is providing a valuable service to Qwest and other interexchange carriers ("IXCs") that they simply refuse to pay for. This is a false allegation. Qwest has no desire to "purchase" the service that Sancom purports to sell, Qwest delivers artificially stimulated traffic to Sancom's "Free Service Provider"⁴ business partners only because it is prohibited from blocking the traffic by order of the Commission.

2. Sancom complains that Qwest's refusal to pay Sancom's unlawful bills for artificially pumped traffic constitutes a violation of the Communications Act. This is simply incorrect. Qwest has no duty to pay a bill for "service" not provided in accordance with Sancom's tariff. And even if Qwest did have such a duty, failure to make such a payment would not constitute a violation of the Communications Act.

3. Sancom argues that a recent summary order by the Wireline Competition Bureau (or "Bureau") allowing two LEC tariffs to take effect notwithstanding a petition to suspend because of alleged traffic pumping demonstrates that the challenges to traffic pumping raised in the petition were rejected by the Commission. In reaching this conclusion, Sancom fails to

³ In addition to the material addressed in this *ex parte* presentation, the Sancom Motion for Summary Judgment is generally predicated on a misreading of the Seventh Report and Order in the CLEC Access Charge Proceeding. *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

⁴ The term "Free Service Provider" or "FSP" is used to describe the variety of partners utilized by local exchange carriers ("LECs") in traffic pumping schemes -- the term includes conference providers, chat line providers, international calling providers, and any others who use the provision of free or below cost service as a device to pump up the traffic of a rural LEC to levels where the FSP service is financed by the sharing of access revenues with the LEC.

mention that the tariffs in question were amended to conform to the relief demanded in the petition before they were allowed to take effect -- pointing to the exact opposite conclusion from the one drawn by Sancom.

4. Sancom argues that the Commission's decision in *Qwest Communications Commission v. Farmers and Merchants Mutual Telephone Company*⁵ is "controlling precedent" for the proposition that calls to a FSP are always covered by a LEC's access tariffs, no matter what the tariff language, structure of the network configuration or nature of the business arrangement between the LEC and the FSP. The Commission has expressly stated that this interpretation of *Farmers and Merchants* is not correct, and that the *Farmers and Merchants Order* is limited to the facts of that proceeding. Moreover, the precise holding that Sancom claims is binding and definitive is under reconsideration by the Commission based on the possibility that the factual premises of that holding had been manufactured by Farmers and Merchants after the complaint proceeding had begun.

5. As noted, Sancom has brought a collection action in federal district court, raising exactly these same erroneous legal arguments to the Court as it has presented in the instant *ex parte* presentation. Similar proceedings are being litigated across the country. It is time that the Commission take rapid and definitive action to bring the practice of traffic pumping to a halt.

II. DISCUSSION

1. *Sancom materially misstates the nature of traffic pumping.*

Much of the Sancom *ex parte* is directed at the refusal of many IXCs to pay for artificially stimulated traffic to Sancom's "Free Service Provider" business partners. Sancom claims that refusal to pay for services not covered by Sancom's tariff is a violation of the Communications Act. This characterization is brought to a new peak in the Sancom *ex parte*:

The only unlawful conduct which the Commission should address is the IXCs' theft of access services and their exercise of self-help in continuing to refuse to pay for the services which they receive pursuant to Northern Valley's, Sancom's and other LECs' lawfully filed tariffs. There is no difference between the IXCs' actions here and a person walking into a restaurant, ordering a meal and then refusing to pay for it.⁶

Sancom's illustration misses the most vital point: Qwest is not a voluntary participant in Sancom's traffic pumping scheme. To the contrary, Qwest is prohibited by the Commission from blocking artificially stimulated traffic sent to Sancom -- even though Qwest has no desire to

⁵ 22 FCC Rcd 17973 (2007) ("*Farmers and Merchants*").

⁶ Sancom *ex parte* at 1.

send this traffic to Sancom and would not do so in the absence of this legal compulsion.⁷ Sancom's analogy can be made much more accurate by editing it to read as follows:

There is no difference between Sancom's actions here and a person finding an IXC outside a restaurant, forcibly dragging him inside at gunpoint, eating an expensive meal provided by his partner, the restaurant owner, and then demanding that the IXC pay for the meal.⁸

Not unnaturally, IXCs object to this scenario and, as is discussed further below, there is no legal reason for IXCs to pay these unlawful bills. But the most basic argument made by Sancom and other traffic pumping LECs -- that IXCs are receiving a valuable service when they deliver pumped traffic to the LECs -- is simply false.

2. *Sancom's claim that it is a violation of the Communications Act for Qwest to decline to pay for services that are not covered by Sancom's tariff is wrong.*

Sancom spends considerable time on its assertion that "[t]he Commission should reiterate that the IXCs' resort to impermissible self-help tactics is unlawful."⁹ Citing some cases dealing with what is called "self-help" by customers of carriers, Sancom seems to be arguing that the Commission should order Qwest and other IXCs to pay the bills that Sancom and others have submitted for their pumped access traffic.¹⁰ Fundamentally, if a customer of a carrier fails to pay for service, the carrier has the right to cut off the service and to sue for the amounts allegedly due. Sancom has done the latter, but not the former. Sancom cannot rely on the Commission to act as a collection agency. While Qwest has no obligation to pay Sancom for the artificially stimulated traffic at issue here, even if Qwest did owe money to Sancom, this Commission is not the place to go to collect it.¹¹

⁷ See *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).

⁸ To further Sancom's analogy, given the fact that the service provided "to" the IXCs is not switched access as defined in Sancom's tariffs, traffic pumping LECs such as Sancom have effectively demanded that the IXCs pay for food listed on the menu that does not match the food that was consumed.

⁹ Sancom *ex parte* at 3.

¹⁰ *Id.* at 5.

¹¹ This Commission has repeatedly held that it does not have jurisdiction to enter a collection order such as Sancom seeks. See *In the Matter of U.S. Telepacific Corp. v. Tel-America of Salt Lake City, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 24552, 24555-56 ¶ 8, n. 27 (2004); *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7471-72 ¶ 23, n. 93 (2004) and cases cited therein.

Moreover, the “self-help” rules are an off-shoot of the filed tariff doctrine. These rules provide that, if a customer fails to pay the filed rate for service received pursuant to tariff, and the carrier cuts off service, the Commission will not intervene.¹² As noted above, the entire traffic pumping scheme is predicated on coercion of the IXCs, and at no time has Sancom or any other traffic pumping LEC discontinued service to Qwest on account of non-payment of bills for artificially stimulated traffic. Whatever damages Sancom might be suffering, Sancom could have mitigated them long ago by discontinuing service to IXCs declining to pay for pumped traffic.

Finally, much of Qwest’s claims against Sancom and others is predicated on the fact that Sancom’s tariffs do not apply to the artificially stimulated traffic at all. If a carrier bills a customer for a service that is not consistent with or covered by the carrier’s tariff, there is clearly no obligation to pay based on the filed tariff doctrine. The services that Sancom billed Qwest for were not lawfully charged under Sancom’s tariffs. Sancom has no more right to bill Qwest for those access services under its tariff than it would for groceries or haberdashery. The filed tariff doctrine is simply inapplicable.

3. *Sancom’s claim that “the recent Bureau Order demonstrates that the holding in Farmers and Merchants is settled law” is seriously misleading, especially presented to a federal court.*¹³

Sancom has claimed, both to the Commission and to the District Court in South Dakota, that a recent summary order by the Wireline Competition Bureau denying an AT&T petition to suspend and investigate the tariffs of two LECs suspected of traffic pumping stands for the proposition that traffic pumping LECs may legally bill IXCs for artificially pumped traffic to their FSP partners.¹⁴ In making this argument, Sancom mischaracterizes the meaning of the *Farmers and Merchants Order*. Of far greater significance, in claiming that the Bureau had rejected AT&T’s claims concerning traffic pumping, Sancom fails to mention that the AT&T petition was denied only after the two LECs in question had amended their tariffs (pursuant to special permission of the Commission) to grant the relief that AT&T had requested in its petition. The Bureau decision does not support Sancom -- indeed, it stands for precisely the opposite conclusion.

¹² See, *In the Matter of Business WATS, Inc. v. American Telephone and Telegraph Company*, Memorandum Opinion and Order, 7 FCC Rcd 7942 ¶ 2 (1992); *In the Matter of MCI Telecommunications Corporation v. American Telephone and Telegraph Company*, Memorandum Opinion and Order, 62 FCC 2d 703, 705-06 ¶¶ 6-7 (1976).

¹³ Quotation from Sancom *ex parte* at 5, capitalization and italization omitted.

¹⁴ *Id.*

The basic transactions that form the basis of Sancom's argument, as described by Sancom, are the following. On June 16, 2009, several small LECs filed their bi-annual access tariffs.¹⁵ AT&T timely filed a petition to suspend and investigate, claiming that these two carriers were engaged in traffic pumping and that their rates were unreasonable based upon AT&T's projections of traffic.¹⁶ AT&T's basic attack was on the lawfulness of the rates, and it requested that, in addition to a review of the rate levels based on projections, "both of these LECs should be required to include a provision in their tariff that requires them to file updated tariffs within 60 days if their demand increases by more than 100% compared to the demand levels on which their previous rate were set."¹⁷ The AT&T petition did not mention the issue of whether traffic to conference bridges and chat line providers engaged in a traffic pumping partnership with the LECs was access traffic covered by their tariffs. The carriers duly responded on June 26, 2009, contending that the rates were reasonable and lawful (and pointing out that the Northwest Iowa tariff filing actually contained a significant rate decrease).¹⁸ By Public Notice of July 1, 2009, the Commission announced that the AT&T "petitions to reject or suspend and investigate the following tariff transmittals are denied, and the transmittals will, or have become effective on the date specified below."¹⁹

From these events (that Sancom implies represent the entire story) Sancom essentially concludes that the Bureau has endorsed Sancom's position by adopting the position espoused by the LECs defending their tariff filings. Sancom claims that:

The Bureau rejected the AT&T Petition in only seven days. As Northwest Iowa Telephone Company successfully argued, 'compliance with the Commission's rules is by definition a reasonable practice.'²⁰

Sancom continues:

Thus, despite AT&T's continual, inflammatory references to 'traffic pumping,' 'revenue sharing' and 'well known traffic stimulation schemes,' . . . the Bureau

¹⁵ ICORE, Northwest Iowa Telephone Company, Transmittal No. 91, Tariff No. 2 (June 16, 2009) (Northwest Iowa); Geneseo Communications Inc., Transmittal No. 13, Tariff No. 1 (June 16, 2009) (Geneseo).

¹⁶ Petition of AT&T Corp. to Suspend and Investigate, filed June 23, 2009.

¹⁷ *Id.* at 10.

¹⁸ Reply of Northwest Iowa Telephone Company to Petition of AT&T Corp. to Suspend and Investigate; Reply of Geneseo Communications, Inc.

¹⁹ Public Notice, Protested Tariff Transmittals Action Taken, WCB/Pricing File No. 09-02, DA 09-1493 (July 1, 2009) ("*WCB July 1 Public Notice*").

²⁰ Sancom *ex parte* at 5.

promptly rejected AT&T's challenge, concluding that AT&T had 'not presented issues regarding the [proposed tariffs] that raise significant questions of lawfulness that require investigation.'²¹

Sancom thus concludes:

In addition, the *Bureau Order* demonstrates that the core ruling of *Farmers and Merchants* -- that LECs are entitled to terminating access when they terminate long-distance calls to conference services and chat line providers -- remains unassailable precedent."²²

On its own terms, Sancom's reasoning is fallacious. The AT&T petition never sought a declaration that the traffic pumping LECs' tariffs should be rejected because the FSP partners of the LECs were not proper end-user customers, but instead focused on the unlawful rates that would have resulted if the tariffs were allowed to go into effect as filed. Thus, Sancom's argument fails even under its own description of what occurred.

But, most significantly, Sancom has not recited a complete story. To the contrary, the true facts, based on the Commission's public record, are the diametrical opposite of those represented by Sancom. Here is what Sancom left out.

After the filing of the LEC responses to the AT&T petition, the LECs were contacted by the Commission's staff. Based on these contacts, the LECs agreed to modify their tariffs to comply with the "safe harbor" demands made by AT&T in its petition. In order to accomplish these modifications, the LECs needed special permission from the Commission. These special permission requests were filed on June 30, 2009. The Northwest Iowa/ICORE special permission request confirms the role of the FCC staff and the AT&T petition in the tariff filing, and states as follows:

This filing is being made in response to a petition filed by AT&T against Northwest Iowa Telephone Company's 2009 biannual access tariff filing. Based on discussion with the FCC staff, Northwest Iowa agreed to the safe harbor language set forth on Page 6-1 of ICORE's F.C.C. Tariff No. 2.²³

The language in the Geneseo special permission request is similar:

²¹ *Id.* at 5, 6.

²² *Id.* at 6.

²³ Application No. 17, Letter from Tina Bobbyn, ICORE, to Secretary, Federal Communications Commission, June 30, 2009 (attached as Exhibit B).

Second, Geneseo requests Special permission to revise its tariff for the purpose of adding the safe harbor refile trigger procedure prescribed by the Commission in the Investigation of Certain 2007 Annual Access Tariffs, WC Docket No. 07-184, WCB/Pricing No. 07-10, Designating Issues for Investigation, DA 07-3739 (Released August 24, 2007) at paragraph 28.²⁴

Based on the grant of this special permission, amendments to the two LEC tariffs were duly filed on the same day, June 30, 2009, to take effect the next day.²⁵ These amendments were almost identical in language, and read (as stated in the Geneseo filing):

Revised Local Switching Rates contained in 17.2.3(A) and Transport Rates contained in 17.2.2 must be filed within 60 days of the month in which its interstate local switching demand increases to a level that is more than 100 percent over the interstate local switching demand in the same month of the previous year.²⁶

Geneseo and Northwest/Iowa/ICORE having acceded to AT&T's demand, the Wireline Competition Bureau, by Public Notice of July 1, 2009, summarily denied the AT&T petitions.²⁷

This tariff processing was obviously routine and consistent with the Commission's earlier handling of traffic pumping tariffs in 2007.²⁸ After the filing of the AT&T petition, the LECs agreed that, if they experienced dramatic (100% over the same month the previous year) traffic increases, they would file new rates within 60 days. Focusing on the carriers' rate levels, the amended tariffs ensured that the huge increases in traffic that traffic pumping LECs have experienced in the past would result in reduced access rates. The only conclusion that can be drawn from the proceeding is that the Commission remains concerned, as it was in the *Farmers and Merchants* case and in the 2007 tariff proceedings, that some rural LEC rates would be exorbitant if traffic increased dramatically. In essence, the AT&T petition was granted through voluntary action of Geneseo and Northwest Iowa. Sancom's characterization of the process was both incomplete and misleading.

²⁴ Special Permission No. 3, Letter from Scott Rubins, Geneseo, to Marlene H. Dortch, June 30, 2009 (attached as Exhibit C).

²⁵ Geneseo Transmittal No. 14, June 30, 2009 (attached as Exhibit D); ICORE Transmittal No. 92, June 30, 2009 (attached as Exhibit E).

²⁶ Geneseo Telephone Company, FCC Tariff Number 1, Issued June 30, 2009, Effective July 1, 2009 (see Exhibit D). See also ICORE Tariff FCC No. 2, Section 6.1, Issued June 30, 2009, Effective July 1, 2009 (see Exhibit E).

²⁷ See *WCB July 1 Public Notice*.

²⁸ *In the Matter of Investigation of Certain 2007 Annual Access Tariffs*, Order Designating Issues for Investigation, 22 FCC Rcd 16109 (Chief, Pricing Policy Division, 2007).

4. *Sancom mischaracterizes the Farmers and Merchants decision.*

Sancom adds as another argument the claim that the Commission's *Farmers and Merchant's* decision is "settled, controlling precedent for the proposition that CLECs' switched access tariffs govern the traffic from IXCs delivered by LECs to customers of the LEC for calls to all end users that offer conference calling and chat-line services."²⁹ Sancom further elaborates that "[t]hat precedent is not imperiled by Qwest's allegations at the Commission that Farmers neglected to produce certain documents in discovery, nor the FCC's order compelling production of that additional evidence."³⁰ Finally, Sancom contends that the Commission cannot possibly be reconsidering the substance of any part of the *Farmers and Merchants* decision because it did not issue a further reconsideration decision within three months of the filing of the Qwest Supplement to its Petition for Reconsideration on May 29, 2008.³¹

Sancom's position here is incorrect as well. *Farmers and Merchants* does not stand for the general proposition asserted by Sancom, and even the limited conclusion regarding the customer status of the FSPs under Farmers and Merchants' own tariffs is under reconsideration.

First, Sancom's argument that the *Farmers and Merchants* decision is settled and industry-wide precedent has been expressly contradicted by the Commission itself. *Farmers and Merchants* was a formal complaint proceeding, an adjudication that examined the specific facts of the traffic pumping operations of a particular incumbent LEC, Farmers and Merchants Mutual Telephone Company, and the particular tariffed rates that Farmers and Merchants charged in its traffic pumping operation. The Commission found, based on the facts of record, that Farmers and Merchants had violated the Communications Act by charging unlawful and unreasonable rates but that Farmers and Merchants' conference calling partners were end-user customers under the specific facts presented and the specific language of the Farmers and Merchants tariff. There was never any intention by the Commission to take any aspects of the *Farmers and Merchants Decision* beyond the scope of the facts examined -- certainly not to blindly apply the limited conclusion in *Farmers and Merchants* to every conceivable fact pattern that developed thereafter.

The Commission itself has made this very clear. In *In the Matter of Request for Review by InterCall, Inc.*,³² the Commission addressed a similar argument in the context of evaluating the liability of audio bridge providers to make universal service contributions, and stated as follows:

²⁹ Sancom *ex parte* at 6.

³⁰ *Id.*

³¹ *Id.* at 2.

³² See, *In the Matter of Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, 23 FCC Rcd 10731 (2008).

Similarly, InterCall's attempts to cast the decision in the *Qwest v. Farmers Order* as evidence that the Commission has determined that conference calling companies are end users is misplaced. As in the *Call Blocking Decision*, the Commission was assuming certain facts in the case as the parties presented them. Specifically, the Commission's statement that conference calling companies are end users was premised on Farmer's assertion that this was how they were defined in Farmers' tariff. Moreover, as Verizon notes, the holding in the *Qwest v. Farmers Order* is subject to reconsideration on the factual issue of whether the conference calling companies were end users under Farmer's tariffs. We, therefore, conclude that the prior precedent cited by InterCall does not support a finding that InterCall is an end user for purposes of direct USF contribution obligations. Rather, InterCall and other similarly-situated audio bridging service providers are providers of telecommunications, and, as such, have an obligation to directly contribute to USF.³³

Sancom did not address this decision of the Commission.

Second, Sancom misstates the nature of the reconsideration proceeding in *Farmers and Merchants*. The Qwest reconsideration petition challenged directly the Commission's conclusion that Farmers and Merchants' conference calling partners were end users under Farmers and Merchants' tariff. This challenge to the end user/subscriber status of Farmers and Merchants' FSP partners is the basis for the partial grant of Qwest's reconsideration petition. The factual issue was not, as Sancom says, whether "Farmers neglected to produce certain documents in discovery, []or the FCC's order compelling production of that additional evidence."³⁴ Rather, Qwest had claimed that Farmers and Merchants had deliberately withheld certain critical evidence, and backdated certain relevant documents, in order to create the false impression that its FSP partners were end-user customers under its tariff. The reconsideration petition is best described in Qwest's May 29, 2008 Second Supplemental Petition for Partial Reconsideration:

In its petition for partial reconsideration, Qwest stated that new facts had eviscerated the evidentiary basis for the Commission's determination that the free service providers ("FSPs") in this matter had taken service subject to a Farmers and Merchants Mutual Telephone Company ("Farmers") tariff. That determination had been a necessary factual predicate to Farmers' claim to assess terminating access charges on Qwest in relation to that traffic. The facts developed during reconsideration have confirmed Qwest's assertion, demonstrating beyond any doubt that Farmers and the FSPs did not interact under

³³ *Id.* at 10737 ¶ 21

³⁴ Sancom *ex parte* at 6.

the terms of any tariff. CONFIDENTIAL MATERIAL DELETED. The evidence reveals a sophisticated scam entered into by Farmers and the FSPs, made worse by Farmers' efforts during this litigation to conceal the true facts by manufacturing documents and hiding evidence of such fabrication, all in an effort to demonstrate that the FSPs were in fact subscribers under Farmers' tariffs.³⁵

The Commission in its initial *Reconsideration Order* sought to examine the same issues (although in the tone of the adjudicator, rather than that of an advocate).³⁶

It is certainly true that the Commission has not yet acted on the further reconsideration petitions in *Farmers and Merchants*. That said, it is also true that the core of the reconsideration proceeding is whether the FSPs were actually end-user customers under Farmers' tariff, and whether Farmers could lawfully bill Qwest for access for traffic delivered to its FSP partners. Sancom's characterization of the *Farmers and Merchants* proceeding is simply not remotely reflective of the actual proceeding.

Third, Sancom claims that the Commission cannot possibly be considering the real issues in *Farmers and Merchants* because, if it were, it would have issued a decision long ago.³⁷ This argument is predicated on the fact that Section 405(b)(1) of the Communications Act requires the Commission to issue a reconsideration order in a complaint proceeding challenging a carrier's "charge, classification, regulation, or practice" within 90 days of the date of the filing of a petition for reconsideration.³⁸ Because the Commission has not issued a decision within 90 days of the filing of Qwest's Second Supplement to Petition for Reconsideration, and because at least some aspects of the case involve a challenge to Farmers and Merchants' rate levels, Sancom claims that there is no basis for presuming that any tariff-related decisions are pending reconsideration in *Farmers and Merchants*.³⁹

Sancom's argument here is simply incomprehensible. If Sancom were arguing that the Commission's jurisdiction were somehow impaired by its failure to act within a statutory deadline (and it is not at all clear that, under the circumstances of this case, the Commission has missed any statutory deadlines), at least Qwest could analyze its position and respond. But instead Sancom is claiming that, because the Commission did not act on the Qwest Petition

³⁵ Qwest Communications Corporation Second Supplement to Petition for Partial Reconsideration, Public Version, filed May 29, 2008 at 1-2.

³⁶ *In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company*, Order on Reconsideration, 23 FCC Rcd 1615, 1616-18 ¶¶ 3-7 (2008).

³⁷ Sancom *ex parte* at 7-8.

³⁸ 47 U.S.C. §§ 208(b)(1) and 405(b)(1).

³⁹ Sancom *ex parte* at 8.

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August 3, 2009

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within 90 days of filing, Sancom somehow can divine what the Commission's order will say when ultimately released. This is simply not a valid argument.

5. *Sancom's filing dramatizes the importance of expeditious action by the Commission to eliminate traffic pumping.*

As discussed above, the Sancom position enunciated in the *ex parte* is predicated on an erroneous presentation of key facts and FCC legal conclusions. Sancom has also presented these identical arguments to a federal distinct court. Qwest submits that it is incumbent on this Commission to promptly put a stop to the practices that underpin the traffic pumping phenomenon and to clarify the basic legal premises that are outlined in this letter.

Very truly yours,

/s/ Robert B. McKenna

cc: (via e-mail)

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

* * * * *

SANCOM, INC., a South Dakota Corporation,
 Plaintiff, Counterclaim Defendant
 vs.

QWEST COMMUNICATIONS COMPANY, LLC
 a Delaware corporation,
 Defendant, Counterclaimant
 vs.

FREE CONFERENCING CORP.,
 a Nevada Corporation,
 Counterclaim Defendant.

* * * * *

Civ. 07-4147

NOTICE OF SUPPLEMENTAL AUTHORITY

Sancom, Inc. ("Sancom") hereby respectfully submits this Notice of Supplemental Authority to apprise the Court of a recent decision from the Wireline Competition Bureau of the Federal Communications Commission (the "Bureau")¹ that address directly its claims that Qwest has unlawfully withheld payment of terminating access fees.² As further explained herein, this recent decision demonstrates that, as

¹ Protested Tariff Transmittal, Action Taken, Report No. WCP/Pricing File No. 09-02 (July 1, 2009) (Attached hereto as Exhibit 1) ("*Bureau Order*").
² The Communications Act of 1934 permits the FCC to delegate authority to its Bureaus for the issuing of final decisions on particular matters. 47 U.S.C. § 5(c). Pursuant to that authority, the FCC delegated to the Wireline Competition Bureau the authority to render final decisions on the validity of telecommunications tariffs. 47 C.F.R. § 91(c).

Sancom previously has argued, the decision of the Federal Communications Commission decision in the *Farmers and Merchants* case³ is settled and remains controlling federal law.

By way of background, Interexchange Carriers (“IXCs”) throughout the country have refused to pay various local exchange carriers (“LECs”) for the terminating access these LECs provide when IXC customers phone conference call or chat line services that are the end user customers of those LECs. In several pieces of related litigation arising from this unilateral refusal to pay, the IXCs are attempting to justify their refusal to pay terminating access charges upon the FCC’s grant of partial reconsideration in the *Farmers and Merchants* proceeding. The substantive analysis and holding in *Farmers and Merchants* are, however, settled and are dispositive of the claims against Qwest in this case. The pendency of Qwest’s supplemental petition for reconsideration in that proceeding does not in any way undermine that analysis or holding. The *Bureau Order* explicated below simply underscores this conclusion.

The Recent *Bureau Order* Demonstrates That The Holding In *Farmers And Merchants* Is Settled Law

AT&T Corp. (“AT&T”) recently petitioned the Wireline Competition Bureau of the Federal Communications Commission for the suspension and investigation of the access tariffs of three Iowa LECs that are subject to the Commission’s rate-of-return regulations, Northwest Iowa Telephone Company, Geneseo Communications, Inc. and

³ *Qwest Communs. Corp. v. Farmers and Merchants Mut. Tel. Co.*, File No. EB-07-MD-001, Memorandum Opinion and Order, FCC 07-175, 22 FCC Rcd. 17973 (2007) (“*Farmers and Merchants Order*”), *recon.* 23 FCC Rcd. 1615 (2008) (“*Order on Reconsideration*”).

Union Telephone Company. Applying the defamatory moniker “traffic pumping,”⁴ AT&T challenged these access tariffs on the ground that the LECs’ service to conference calling companies and chat-line providers would result in “substantially inflated [rates] and ... returns that far exceed the Commission’s prescribed 11.25% rate of return.” AT&T Petition at 2. AT&T did not, because it could not, allege that any of the LECs had violated any statute or Commission regulation. Rather, AT&T could resort only to the argument that that the “‘safe harbor’ [provisions of the Commission’s existing rules do] not provide adequate protection here.” *Id.* at 9.

The Bureau rejected the AT&T Petition in only seven days. As Northwest Iowa Telephone Company successfully argued, “compliance with the Commission’s rules is by definition a reasonable practice.”⁵ Northwest Reply at 4. Thus, if AT&T (and the other IXCs in these related cases) seek modification of the Commission’s rules, such changes can “only be undertaken in a rulemaking if the existing rules are not resulting in just and reasonable rates.” *Id.* at 3. A conclusion to the contrary would simply validate AT&T’s improper collateral attack on binding FCC regulations. *Id.* at 5. Thus, despite AT&T’s continual, inflammatory references to “traffic pumping,” “revenue sharing” and “well-known traffic stimulation schemes,” (AT&T Petition at 2, 5), the Bureau promptly rejected AT&T’s challenge, concluding that AT&T had “not presented issues regarding the [proposed tariffs] that raise significant questions of lawfulness that require investigation.” *Bureau Order* at 1.

⁴ See Petition of AT&T Corp. to Suspend and Investigate, WCP/Pricing File No. 09-02 (June 23, 2009) (“AT&T Petition”) (Attached hereto as Exhibit 3).

⁵ See Reply of Northwest Iowa Telephone Company to Petition of AT&T Corp. to Suspend and Investigate. WCP/Pricing File No. 09-02 (June 26, 2009) (“Northwest Reply”) (Attached hereto as Exhibit 4).

As an initial matter, it bears mention that the AT&T Petition itself demonstrates that the proper means to challenge an access tariff, and thus lawfully refuse to pay the charges contained therein, is through a petition for suspension or rejection of a new tariff filing pursuant to 47 C.F.R. § 1.773.⁶ In addition, the *Bureau Order* demonstrates that the core ruling of *Farmers and Merchants* — that LECs are entitled to terminating access when they terminate long-distance calls to conference services and chat line providers — remains applicable and intact. This conclusion is further buttressed by a recent decision by the Enforcement Bureau of the FCC which reiterated that chat line providers are end user customers of LECs for purposes of resolving intercarrier compensation.⁷

Thus, all of the IXCs' attempts to justify their refusal to pay tariffed terminating switched access charges have been addressed, and rejected, by the Commission in the *Farmers and Merchants Order* and have been subsequently reaffirmed by its attendant Bureaus. There remains, therefore, no basis for claiming that issues before the Court remain unsettled.

The Order on Reconsideration In the *Farmers and Merchants* Case Changed Nothing About the Commission's Core Holding That LECs Are Entitled to Tariffed Rates for Minutes of Use Associated with Calls to Conferencing Companies

⁶ Challenges to a carrier's tariff or to the Commission's rules, however, can only operate prospectively as a matter of law. *See AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992). As the Seventh Circuit explained in *Jahn v. 1-800-FLOWERS.com, Inc.*, 284 F.3d 807 (7th Cir. 2002), "[f]ederal regulations do not, indeed, cannot apply retroactively unless Congress has authorized that step explicitly. No statute authorizes the [FCC] to adopt regulations with retroactive effect. . . ." *Id.* at 810 (citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988)); *see also Virgin Islands Tele. Corp. v. FCC*, 444 F.3d 666, 669 (D.C. Cir. 2006) ("A carrier charging rates under a lawful tariff, however, is immunized from refund liability, even if that tariff is found unlawful in a later complaint or rate prescription proceeding. Refunds from lawful tariffs are 'impermissible as a form of retroactive rulemaking.' Remedies against carriers charging lawful rates later found unreasonable must be prospective only." (quoting *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 410-11 (D.C. Cir. 2002))).

⁷ *North County Comm. Corp. v. MetroPCS CA, LLC*, File No. EB-06-MD-007, FCC 09-719, Memorandum Opinion and Order at ¶ 3 (March 30, 2009) (Attached hereto as Exhibit 2). This case involved an intercarrier compensation dispute between a wireless carrier and a wireline LEC.

The *Bureau Order* further demonstrates that *Farmers and Merchants* is settled, controlling precedent for the proposition that CLECs' switched access tariffs govern the relationship between long distance carriers and LECs for calls to all LEC end users, including those end users that offer conference calling and chat-line services. That precedent is not imperiled by Qwest's allegations at the FCC that Farmers neglected to produce certain documents in discovery, nor the FCC's order compelling production of that additional evidence.

The *Memorandum Opinion and Order* in *Farmers and Merchants* thus remains settled, controlling precedent in this case. In addition to the Bureau's reliance on that decision, three other grounds support this conclusion. First, the plain language of the *Order on Reconsideration* states that the FCC has not altered, changed, or abrogated its holding in the *Memorandum Opinion and Order*. Second, even if the FCC were considering any tariff-related issues as part of Qwest's petition for reconsideration, federal law would have required the FCC to resolve those issues more than a year ago. *See* 47 U.S.C. § 405(b). Third, federal law makes clear that Qwest must comply with and adhere to the *Memorandum Opinion and Order* unless and until it is expressly overturned or changes. *See* 47 C.F.R. § 1.429(k).

A plain reading of the *Order on Reconsideration* demonstrates that the FCC is keeping Qwest's procedural allegations separate and apart from the substantive legal issues it previously decided. In the *Order on Reconsideration*, the FCC observed that "Qwest ha[d] identified documents that are potentially relevant to this case, and that Farmers ought to have produced." 23 FCC Rcd. at 1619 ¶ 10. The FCC expressly stated, however, that "[w]e take no view at this time as to whether that evidence ultimately will

persuade us to change our decision on the merits[.]” 23 FCC Rcd. at 1617 ¶ 6.

Therefore, any contention by an IXC that the Court, on the basis of the slim content of the *Order on Reconsideration*, should ignore or accord no deference to the *Memorandum Opinion and Order* is misplaced.

Such an argument blurs the clear distinction between the tariff-based issues in that case and the non-tariff-based issues that Qwest raised for reconsideration. The tariff-based issues — whether the LEC was entitled to receive the terminating access charges for which it had filed a lawful tariff — were disposed of in the *Memorandum Opinion and Order*. What remains are non-tariff based issues, and they cannot be deemed to overturn or in any way affect the previous holding.

Moreover, any assertion that the FCC is reconsidering the substantive, tariff-based portion of *Farmers and Merchants* is disproved by the procedural schedule to which the FCC has adhered in that case. Throughout that proceeding, the FCC has faithfully adhered to its statutory deadlines related to addressing the tariff-based reconsideration issue, the only issue that is relevant to this case. Already more than 90 days have passed since Qwest filed its Supplement to Petition for Partial Reconsideration, and thus any pending reconsideration issues plainly do not relate to the FCC tariff holdings, else the FCC would be in violation of a statutory deadline. 47 U.S.C. § 405(b). The FCC, however, is entitled to a presumption that it acts in good faith to satisfy its statutory obligations.⁸ Here, the FCC has repeatedly abided by Congress’s statutory deadlines,

⁸ E.g., *United States v. Morgan*, 313 U.S. 409, 421 (1941) (“The Commissioners are appointed by the President with the advice and consent of the Senate. We presume those elected bodies select individuals of ‘conscience and intellectual discipline’ who will perform their duties diligently.”) (citing 47 U.S.C. § 154(a)); *Sprint Nextel v. FCC*, 508 F.3d. 1129, 1133 (D.C. Cir. 2007) (“There is no indication that the Commission or individual Commissioners have abused this provision or have acted in bad faith. Absent such evidence, it is appropriate to assume that their behavior is regular and proper.”).

demonstrating that the issues remaining in *Farmers and Merchants* are not tariff-based; that is, the question whether Farmers and Merchants can enforce and collect its tariffed access charges is not pending. As such, there is no basis for presuming that any tariff-related decisions are pending reconsideration in *Farmers and Merchants*. Accordingly, the Court can and should defer to that binding decision in resolving the claims before it in this proceeding.

Finally, even if aspects of the *Farmers and Merchants* decision were arguably subject to reconsideration — which they are not — the FCC's rules require compliance with final orders, regardless of whether a petition for reconsideration is pending.

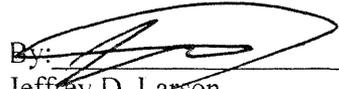
Commission Rule 1.429(k) states in pertinent part that

Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with any rule or operate in any manner to stay or postpone its enforcement. However, upon good cause shown, the Commission will stay the effective date of a rule pending a decision on a petition for reconsideration.

47 C.F.R. § 1.429(k). The *Farmers and Merchants Memorandum Opinion and Order* has not been stayed, and thus is controlling law in this case. Hence, the Wireline Competition Bureau just relied on it July 1, 2009.

July 16, 2009

Respectfully submitted,

By: 
Jeffrey D. Larson
Larson & Nipe
PO Box 277
Woonsocket, SD 57385
Tel: (605) 796-4245

Ross A. Buntrock (admitted *pro hac vice*)
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Counsel to Sancom, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that on July 16, 2009, the foregoing Notice of Supplemental Authority was electronically filed with the Court and served upon all counsel of record listed below.


Jeffrey D. Larson

George Baker Thomson, Jr.
Qwest Services Corporation
1801 California St.
Suite 1000
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Charles W. Steese
Steese & Evans, PC
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Christopher Wayne Madsen
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Sioux Falls, SD 57117

Ronald A. Parsons, Jr.
Johnson, Heidepriem, Abdallah & Johnson, LLP
PO Box 2348
Sioux Falls, SD 57101

EXHIBIT B

Tina Bobbyn
Senior Vice President



Consulting
Network Services
Competitive Activities
Regulatory Assistance

June 30, 2009

ICORE, Inc.
326 South Second Street
Emmaus, PA 18049

Application No. 17

Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Attention: Wireline Competition Bureau

ICORE, Inc. (FRN #0003-7943-69), respectfully, requests waiver of Section 61.58 of the Commission's rules in order to file revised tariff pages on not less than one day's notice to become effective July 1, 2009.

This filing is being made in response to a petition filed by AT&T against Northwest Iowa Telephone Company's 2009 biannual access tariff filing. Based on discussion with FCC staff, Northwest Iowa agreed to the safe harbor language set forth on Page 6-1 of ICORE's F.C.C. Tariff No. 2. This filing is requested to be effective July 1, 2009.

The original letter of application, along with F.C.C. Form 159 and the required \$815.00 filing fee are being delivered via overnight service to the Mellon Bank in Pittsburgh, Pennsylvania. Acknowledgment and date of receipt of this filing fee by Mellon Bank are requested. A duplicated letter is provided for this purpose. Any questions regarding the filing may be directed to me at the address and phone number below.

Respectfully submitted,

Tina Bobbyn

ICORE, Inc.

By: Tina Bobbyn
Senior Vice President
326 S. Second Street
Emmaus, PA 18049
(610) 928-3918

Enclosures

ACCESS SERVICE**CHECK SHEET**

Original Title Pages 1 to 4 and Pages 1 to 1210 inclusive of this tariff are effective as of the date shown. Original and revised pages as named below and on Supplement No. 2 contain all changes from the original tariff that are in effect on the date hereof.

Page	Revision	Page	Revision	Page	Revision
Title 1	1st	2-14	1st	2-49	2nd
Title 2	7th	2-15	1st	2-51	2nd
Title 3	11th	2-15.1	Original	2-56	1st
Title 4	2nd	2-15.2	Original	2-71	1st
1	39th*	2-15.3	Original	3-1	1st
1.1	22nd	2-15.4	Original	3-2	1st
1.2	22nd	2-16	2nd	3-3	1st
1.3	22nd	2-17	1st	3-4	1st
1.4	22nd	2-18	1st	3-5	1st
1.5	21st	2-19	1st	3-6	1st
1.6	21st	2-19.1	Original	3-7	1st
1.7	20th	2-19.2	Original	3-8	1st
1.8	15th	2-19.3	Original	3-9	1st
1.9	15th	2-19.4	Original	3-10	1st
1.10	13th	2-20	1st	3-11	1st
1.11	5th	2-21	3rd	3-12	1st
1.12	Original	2-21.1	2nd	3-13	1st
3	1st	2-21.2	1st	3-14	1st
8	1st	2-21.3	1st	3-15	3rd
8.1	Original	2-21.4	1st	3-16	3rd
9	1st	2-22	1st	4-5	1st
10	Original	2-23	1st	5-10	1st
15	1st	2-25	1st	5-11	1st
19	1st	2-25.1	Original	5-19	1st
19.1	Original	2-25.2	Original	5-20	1st
20	3rd	2-25.3	Original	5-21	1st
21	6th	2-26	1st	5-25	3rd
22	7th	2-26.1	Original	5-26	1st
23	5th	2-31	1st	6-1	4th*
24	7th	2-37	1st	6-5	2nd
33	1st	2-38	1st	6-8	1st
2-7	3rd	2-39	1st	6-9	1st
2.7.1	1st	2-40	1st	6-9.1	Original
2.7.2	Original	2-43	1st	6-13	1st
2-8	3rd	2-46	2nd	6-23	1st
2-8.1	1st	2-48	2nd	6-38	1st

* New or revised page.

Transmittal No. 92

Issued: June 30, 2009

Effective: July 1, 2009

ACCESS SERVICE

6. Switched Access Service

6.1 General

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer designated premises and an end user's premises. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in Sections 6.1.3 and 6.5 through 6.9 following.

Rates and charges for Switched Access Service depend generally on the specific Feature Group ordered by the customer, e.g., for MTS or WATS services or MTS/WATS equivalent services, and whether it is provided in a Telephone Company end office that is equipped to provide equal or non-equal access. The application of rates for Switched Access Service is described in Section 6.4 following. Rates and charges for services other than Switched Access Service, e.g., a customer's interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Descriptions of such applicability are provided in Sections 6.4.5, 6.4.9, 6.5.1(H), 6.5.3, 6.6.1(G), 6.6.2(D), 6.7.1(F) and 6.8.1(E) following. Finally, a credit is applied against line side Switched Access Service charges as described in Section 6.4.8 following.

Switched Access Service purchased from the provisions of this tariff may be commingled with unbundled network elements or unbundled network element combinations purchased pursuant to the Commission's Part 51 Interconnection Rules and in compliance with the Federal Communications Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98 and 98-147, adopted February 20, 2003 and released August 21, 2003 (FCC 03-36).

Each carrier listed below must file revised local switching and transport rates within 60 days of the end of the month in which its interstate local switching demand increases to a level that is more than 100 percent over the interstate local switching demand in the same month of the previous year.

Jordan-Soldier Valley Telephone Company
Northeast Iowa Telephone Company, Inc.
Northwest Iowa Telephone Company

(N)(x)

(x) issued under authority of special permission # ___ of the FCC

Transmittal No. 92

Issued: June 30, 2009

Effective: July 1, 2009

EXHIBIT C



June 30, 2009

Special Permission No. 3

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

ATTENTION: Wireline Competition Bureau

RE: Application for Special Permission

CORES/FRN#: 0003-7209-68

Geneseo Telephone Company respectfully requests this application, pursuant to Section 61.151 of the Commission's Rules for Special Permission to waive the requirements of Sections 61.58 and 61.59 of the Commission's Rules and Regulations. This waiver pertains to a tariff revision to Geneseo's FCC Tariff #1, Transmittal No. 13.

This Special Permission is being requested for three (3) reasons. First, Geneseo requests permission to correct a transposition error in the tariff. Geneseo's rate development schedules provided to FCC staff and to interested parties revealed that Tandem Switching rate in the tariff should have been \$0.0087 as contained in the rate development schedules and not \$0.0077 as it appeared on the tariff page file with Transmittal No. 13.

Second, Geneseo requests Special permission to revise its tariff for the purpose of adding the safe harbor refile trigger procedure prescribed by the Commission in the Investigation of Certain 2007 Annual Access Tariffs, WC Docket No. 07-184, WCB/Pricing No. 07-10, Designating Issue for Investigation, DA 07-3738 (Released August 24, 2007) at paragraph 28.

Finally, Geneseo is proposing to reduce its local switching rate in part due to AT&T's assertion that "write-offs" should not be included in Geneseo's rate development and that Geneseo failed to reduce its local switching revenue requirement by including true-up amounts for local switching support that it received from the Universal Service Administrative Company. Geneseo has reviewed AT&T's claim and has recalculated a lower local switching rate.

Illustrative tariff pages are being included with this to designate these changes. Waiver of Section 61.58 of the Commission's Rules is requested to allow Geneseo to file the revised material on not less than one days' notice and waiver of Section 61.59 if of the Commission's Rules is requested to change material that has not yet been in effect for 30 days. Geneseo understands the proposed new Local Switching rate, the new Tandem Switching rate, and the safe harbor language added to the tariff will not have "deemed lawful" status under Section 204(a)(3) of the Act.

The original letter of transmittal, along with F.C.C. Form 159 and the required \$815.00 filing fee are being delivered via overnight service to the U.S. Bank in St. Louis, Missouri.

Please address any correspondence regarding this filing to my attention at the address listed below at the following address.

Sincerely,

Scott Rubins
General Manager – Geneseo Telephone Company
111 East First St
Geneseo, IL 61254
Phone: (309) 944-2103
Fax: (309) 944-4406

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

17.2.2 Recurring Charges

Local Transport

Premium Access

Entrance Facility

Per Termination

Voice Grade Two Wire	\$	12.35	
Voice Grade Four Wire	\$	19.58	
High Capacity DS1	\$	256.00	
High Capacity DS3	\$	2971.95	

NECA
Tariff No. 5
Section
Reference

6.1.3(A) (1)

Direct Trunked Transport

Direct Trunked Facility

Per Mile

Voice Grade	\$	1.30	
High Capacity DS1	\$	28.00	(S)
High Capacity DS3	\$	250.00	(S)

6.1.3(A) (2)

Direct Trunked Termination

Per Termination

Voice Grade	\$	12.35	
High Capacity DS1	\$	280.00	(S)
High Capacity DS3	\$	1400.00	(S)

Multiplexing

Per Arrangement

DS3 to DS1		ICB	
DS1 to Voice	\$	250.00	(S)

6.1.3(A) (5)

Tandem Switched Transport

Tandem Switched Facility

Per Access Minute Per Mile

\$ 0.0000

6.1.3(A) (3)

(S)

Tandem Switched Termination

Per Access Minute Per Termination

\$ 0.0136

Tandem Switching

Per Access Minute Per Tandem

\$ 0.0087

(I) (x)

(S) Reissued material filed under Transmittal No. 13. is scheduled to become effective July 1, 2009.

(x) Filed on less than statutory notice under authority of Special Permission No. xx-xxx to become effective July 1, 2009.

(TR14)

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

17.2.3 End Office

(A) Local Switching

Rate

Premium Access Minute	\$0.0193	(R) (x)
-----------------------	----------	---------

(B) Information Surcharge

Premium Per 100 Access Minutes	\$0.0195	
--------------------------------	----------	--

17.2.3.1 Safe Harbor Trigger

(N) (x)

Revised Local Switching Rates contained	(N) (x)
in 17.2.3(A) and Transport Rates contained	(N) (x)
in 17.2.2 must be filed within 60	(N) (x)
days of the month in which its interstate	(N) (x)
local switching demand increases to a	(N) (x)
level that is more than 100 percent over	(N) (x)
the interstate local switching demand in	(N) (x)
the same month of the previous year.	(N) (x)

(x) Filed on less than statutory notice under authority of Special Permission No. xx-xxx to become effective July 1, 2009.

(TR14)

EXHIBIT D



June 30, 2009

Transmittal No. 14

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

ATTENTION: Wireline Competition Bureau

RE: Access Charge Tariff Filing

CORES/FRN#: 0003-7209-68

The accompanying tariff material, issued on behalf of Geneseo Telephone Company and bearing FCC Tariff #1 effective July 1, 2009, is sent to you pursuant to Special Permission No. 09-019, and in compliance with requirements of the Communications Act of 1934, as amended. This material is scheduled to become effective on July 1, 2009, consists of tariff pages as indicated on the following check sheet:

Tariff F.C.C. No.
1

Check Sheet No.
13th Revised Page 1

The purpose of this filing is to correct a typographical error in the tariff related to the Tandem Switching rate, to add safe harbor language, and to revise Geneseo's Local Switching rate. This filing is being made pursuant to waivers of Section 61.58 and 61.59 of the Commission's Rules granted in Special Permission No. 09-019.

The original letter of transmittal, along with F.C.C. Form 159 and the required \$815.00 filing fee are being delivered via overnight service to the U.S. Bank in St. Louis, Missouri.

Please address any correspondence regarding this filing to my attention at the address listed below at the following address.

Sincerely,

Scott Rubins
President & CEO – Geneseo Telephone Company
111 East First St
Geneseo, IL 61254
Phone: (309) 944-2103
Fax: (309) 944-4406

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

NECA
 Tariff No. 5
 Section
Reference

17.2.2 Recurring Charges

Rate

Local Transport

Premium Access

Entrance Facility
 Per Termination

6.1.3 (A) (1)

Voice Grade Two Wire	\$	12.35	
Voice Grade Four Wire	\$	19.58	
High Capacity DS1	\$	256.00	
High Capacity DS3	\$	2971.95	

Direct Trunked Transport
 Direct Trunked Facility

6.1.3 (A) (2)

		Per Mile	
Voice Grade	\$	1.30	
High Capacity DS1	\$	28.00	(S)
High Capacity DS3	\$	250.00	(S)

Direct Trunked Termination
 Per Termination

Voice Grade	\$	12.35	
High Capacity DS1	\$	280.00	(S)
High Capacity DS3	\$	1400.00	(S)

Multiplexing
 Per Arrangement

6.1.3 (A) (5)

DS3 to DS1		ICB	
DS1 to Voice	\$	250.00	(S)

Tandem Switched Transport
 Tandem Switched Facility
 Per Access Minute Per Mile

6.1.3 (A) (3)
 (S)

\$ 0.0000

Tandem Switched Termination
 Per Access Minute Per Termination

\$ 0.0136

Tandem Switching
 Per Access Minute Per Tandem

\$ 0.0087 (I) (x)

(S) Reissued material filed under Transmittal No. 13. is scheduled to become effective July 1, 2009.

(x) Filed on less than statutory notice under authority of Special Permission No. 09-019 to become effective July 1, 2009.

(TR14)

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

17.2.3 End Office

(A) Local Switching

Rate

Premium Access Minute \$0.0193 (R) (x)

(B) Information Surcharge

Premium Per 100 Access Minutes \$0.0195

17.2.3.1 Safe Harbor Trigger (N) (x)

Revised Local Switching Rates contained (N) (x)
 in 17.2.3(A) and Transport Rates contained (N) (x)
 in 17.2.2 must be filed within 60 (N) (x)
 days of the month in which its interstate (N) (x)
 local switching demand increases to a (N) (x)
 level that is more than 100 percent over (N) (x)
 the interstate local switching demand in (N) (x)
 the same month of the previous year. (N) (x)

(x) Filed on less than statutory notice under authority of Special Permission
 No. 09-019 to become effective July 1, 2009.

(TR14)

EXHIBIT E

Tina Bobbyn
Senior Vice President



Consulting
Network Services
Competitive Activities
Regulatory Assistance

June 30, 2009

ICORE, Inc.
326 South Second Street
Emmaus, PA 18049

Transmittal No. 92

Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Attention: Wireline Competition Bureau

The accompanying tariff material issued by ICORE, Inc. (FRN #0003-7943-69) and bearing F.C.C. No. 2, Access Service, is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended.

This filing, to become effective July 1, 2009, consists of tariff pages as indicated on the following check sheet:

Tariff F.C.C. No. 2

39th Revised Page 1

This filing is made under the authority of F.C.C. Special No. 09-020 in order to become effective on not less than one day's notice. By this filing, Northwest Iowa Telephone Company agrees to the safe harbor language set forth on Page 6-1 of ICORE's F.C.C. Tariff No. 2.

The original letter of transmittal, along with F.C.C. Form 159 and the required \$815.00 filing fee are being delivered via overnight service to the Mellon Bank in Pittsburgh, Pennsylvania. Acknowledgment and date of receipt of this filing fee by Mellon Bank are requested. A duplicated letter is provided for this purpose.

In compliance with Section 61.14 of the Commission's Rules, the transmittal and associated files are being transmitted electronically today via the Commission's Electronic Tariff System.

Any questions regarding the filing may be directed to me at the address and phone number above.

Sincerely,

Tina Bobbyn

cc: Issuing Carriers

Attachment

ACCESS SERVICE

CHECK SHEET

Original Title Pages 1 to 4 and Pages 1 to 1210 inclusive of this tariff are effective as of the date shown. Original and revised pages as named below and on Supplement No. 2 contain all changes from the original tariff that are in effect on the date hereof.

Page	Revision	Page	Revision	Page	Revision
Title 1	1st	2-14	1st	2-49	2nd
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Title 4	2nd	2-15.2	Original	2-71	1st
1	39th*	2-15.3	Original	3-1	1st
1.1	22nd	2-15.4	Original	3-2	1st
1.2	22nd	2-16	2nd	3-3	1st
1.3	22nd	2-17	1st	3-4	1st
1.4	22nd	2-18	1st	3-5	1st
1.5	21st	2-19	1st	3-6	1st
1.6	21st	2-19.1	Original	3-7	1st
1.7	20th	2-19.2	Original	3-8	1st
1.8	15th	2-19.3	Original	3-9	1st
1.9	15th	2-19.4	Original	3-10	1st
1.10	13th	2-20	1st	3-11	1st
1.11	5th	2-21	3rd	3-12	1st
1.12	Original	2-21.1	2nd	3-13	1st
3	1st	2-21.2	1st	3-14	1st
8	1st	2-21.3	1st	3-15	3rd
8.1	Original	2-21.4	1st	3-16	3rd
9	1st	2-22	1st	4-5	1st
10	Original	2-23	1st	5-10	1st
15	1st	2-25	1st	5-11	1st
19	1st	2-25.1	Original	5-19	1st
19.1	Original	2-25.2	Original	5-20	1st
20	3rd	2-25.3	Original	5-21	1st
21	6th	2-26	1st	5-25	3rd
22	7th	2-26.1	Original	5-26	1st
23	5th	2-31	1st	6-1	4th*
24	7th	2-37	1st	6-5	2nd
33	1st	2-38	1st	6-8	1st
2-7	3rd	2-39	1st	6-9	1st
2.7.1	1st	2-40	1st	6-9.1	Original
2.7.2	Original	2-43	1st	6-13	1st
2-8	3rd	2-46	2nd	6-23	1st
2-8.1	1st	2-48	2nd	6-38	1st

* New or revised page.

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ACCESS SERVICE6. Switched Access Service6.1 General

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer designated premises and an end user's premises. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in Sections 6.1.3 and 6.5 through 6.9 following.

Rates and charges for Switched Access Service depend generally on the specific Feature Group ordered by the customer, e.g., for MTS or WATS services or MTS/WATS equivalent services, and whether it is provided in a Telephone Company end office that is equipped to provide equal or non-equal access. The application of rates for Switched Access Service is described in Section 6.4 following. Rates and charges for services other than Switched Access Service, e.g., a customer's interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Descriptions of such applicability are provided in Sections 6.4.5, 6.4.9, 6.5.1(H), 6.5.3, 6.6.1(G), 6.6.2(D), 6.7.1(F) and 6.8.1(E) following. Finally, a credit is applied against line side Switched Access Service charges as described in Section 6.4.8 following.

Switched Access Service purchased from the provisions of this tariff may be commingled with unbundled network elements or unbundled network element combinations purchased pursuant to the Commission's Part 51 Interconnection Rules and in compliance with the Federal Communications Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98 and 98-147, adopted February 20, 2003 and released August 21, 2003 (FCC 03-36).

Each carrier listed below must file revised local switching and transport rates within 60 days of the end of the month in which its interstate local switching demand increases to a level that is more than 100 percent over the interstate local switching demand in the same month of the previous year.

Jordan-Soldier Valley Telephone Company
Northeast Iowa Telephone Company, Inc.
Northwest Iowa Telephone Company

(N)(x)

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