

conflicts with Commission precedent. In cases where the *Jefferson*, *Frontier*, *Beehive* and *Farmers and Merchants* all stand for the proposition, we refer to the “four cases.”

| REQUEST TO IUB | OPPOSING FEDERAL PRECEDENT |
|--|---|
| FCSCs are not End Users of the LECs. Qwest FFCL No. 9. | Directly contravenes the <i>Farmers and Merchants</i> decision, interpreting identical tariff language. 22 FCC Rcd. at 17987, ¶ 38. ⁴² |
| FCSCs do not purchase local exchange service from LECs. Qwest FFCL No. 2. | Directly contravenes the <i>Farmers and Merchants</i> decision, interpreting identical tariff language. 22 FCC Rcd. at 17987, ¶ 38. |
| FCSCs are business partners of LECs. Qwest FFCL No. 8. | Directly contravenes the <i>Farmers and Merchants</i> decision, interpreting identical tariff language. 22 FCC Rcd. at 17987, ¶ 38. |
| LECs never netted access payments for local exchange service with FCSCs. Qwest FFCL No. 5. | <i>Farmers and Merchants</i> finds that payment of money is not relevant. 22 FCC Rcd. at 17987, ¶ 38. |
| No FCSC calls were terminated to an End User’s premises. Qwest FFCL No. 10. | Directly contravenes the <i>Farmers and Merchants</i> decision, interpreting identical tariff language. 22 FCC Rcd. at 17986, |

⁴² Paragraph 38 of *Farmers and Merchants* states:

38. We find that Farmers' payment of marketing fees to the conference calling companies does not affect their status as customers, and thus end users, for purposes of Farmers' tariff. Qwest offers scant support for its assertion that one cannot subscribe to a service without making a net payment to the service provider. For this pivotal proposition, Qwest cites nothing in the tariff itself, but only Black's Law Dictionary's definition of “subscription” as a “written contract by which one engages to ... contribute a sum of money for a designated purpose ... in consideration of an equivalent to be rendered, as a subscription to a periodical, a forthcoming book, a series of entertainments, or the like.” Another dictionary, however, defines “subscribe” as merely “to enter one's name for a publication or service,” and we note that offers of “free subscriptions” are quite common. We reject Qwest's premise that the conference calling companies can be end users under the tariff only if they made net payments to Farmers. The question of whether the conference calling companies paid Farmers more than Farmers paid them is thus irrelevant to their status as end users. The record shows that the conference calling companies did subscribe, *i.e.*, enter their names for, Farmers’ tariffed services. Thus, the conference calling companies are both customers and end users, and Farmers’ tariff therefore allows Farmers to charge terminating access charges for calls terminated to the conference calling companies.

Farmers and Merchants, 22 FCC Rcd at 17987, ¶ 38 (2007) (citations omitted).

| REQUEST TO IUB | OPPOSING FEDERAL PRECEDENT |
|---|---|
| | ¶¶ 33-34. |
| The services that LECs provided to FCSCs was not tariffed access service, it was private carriage. Qwest FFCL Nos. 9, 12. | The Commission found that the identical services were tariffed access services in all of the four cases. |
| “Traffic Pumping” is <i>per se</i> unjust and unreasonable. Qwest FFCL Nos. 28-29. | Because “Traffic Pumping,” as defined by the IXCs is identical to the conduct reviewed, and found not to be unlawful, by the Commission in the four cases, the IUB is prohibited from establishing a <i>per se</i> rule against it. |
| Revenue sharing is an unjust and unreasonable practice. Qwest FFCL No. 21. | The Commission expressly rejected identical claims in all four cases and in <i>Broadband Internet Access Order</i> , 20 FCC Rcd. at 14899-900. |

C. IT WOULD BE IMPOSSIBLE TO COMPLY WITH ESTABLISHED FCC PRECEDENT AND THE ORDER THAT QWEST IS SEEKING

Qwest’s pleadings to the IUB in Docket FCU 07-2 do not even attempt to distinguish between intrastate traffic and interstate traffic,⁴³ and, as noted above, the Board has validated this approach throughout the proceeding. Qwest asks for a ruling that reaches broadly to any LEC that terminates calls to conference, chat or international operators, regardless of the jurisdictional classification of those calls. This is not surprising because it is physically impossible to differentiate between the handling of intrastate and interstate calls to bridges located in Iowa.

Qwest seeks relief that would target a LEC’s actions and behavior that cannot be parsed by jurisdiction. Any findings by the IUB regarding sharing of revenues between LECs and FCSCs, the ownership and placement of the service bridges, the payment of tariffed services by FCSCs are actions that are impossible to break down into “intrastate” and “interstate”

⁴³ Qwest’s witness proffered to address the amount of access charges at issue in the IUB proceeding, Anne Hilton, was asked “[a]s far as you know, has there been a separate figure computed solely for the intrastate costs incurred by Qwest in this case? A. Not to my knowledge.” IUB Hearing Transcript at 1427:17-20.

components. By definition, the IUB's attempt to regulate actions and behavior encroaches on conduct within this Commission's purview, making "compliance with both federal and state law ... in effect physically impossible."⁴⁴

Any decision by the IUB will be premised on its interpretation of the terms of Petitioners' federal tariffs, including "end users," "premises," and "buildings." These are precisely the same terms, used identically, in the federal tariffs that this Commission has interpreted in its *Farmers and Merchants*, *Jefferson*, *Frontier*, and *Beehive* decisions. Neither Qwest nor the IUB can explain how identical language can be interpreted differently in federal and state tariffs, and of course, it cannot be. Because the state tariff language at issue is identical to the federal tariff language, and complying with both federal and state law using opposing interpretations of the same language is "in effect physically impossible" under the *Louisiana PSC* test. For these reasons, a contrary decision issued out of the IUB cannot co-exist with established FCC rulings, and is inimical to the rules and policies set by the FCC. As such, the standards for preemption are met, and the *IUB Order* must be preempted.

D. THE FEDERAL COMMUNICATIONS COMMISSION HAS OCCUPIED THE FIELD OF LEC ACCESS CHARGES, REGARDING BOTH CURRENT LAW AND POTENTIAL PROSPECTIVE CHANGES TO THAT LAW

On October 2, 2007, this Commission issued a Notice of Proposed Rulemaking ("NPRM") in Docket 07-135, specifically to address IXC complaints associated with their "traffic pumping" allegations.⁴⁵ The NPRM established a broad inquiry into the allegations of unlawful access stimulation, and proposed the following items for comment:

- Whether new rules must be established to address instances of access stimulation. NPRM ¶ 11.
- Whether revenue sharing by LECs subject to rate-of-return regulation is unreasonable. *Id.* ¶ 19.

⁴⁴ *Louisiana PSC*, 476 U.S. at 368.

⁴⁵ *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 17989 (2007) ("07-135 NPRM").

- Whether new tariff language is needed to address the impact of increasing revenues on switching rates. *Id.* ¶ 21.
- Whether new regulations are required in the application of the existing tariff rules. *Id.* ¶¶ 21, 25.

Moreover, in the extensive comments filed by many parties, including Qwest, AT&T, and the other large IXCs, these carriers dramatically expanded the scope of the NPRM's inquiry, proposing specific new rules and policies to address the purported problems of "traffic pumping" by CLECs.⁴⁶ Thus, the Commission's pending rulemaking proceeding in Docket No. 07-135 is actively considering literally all of the issues upon which the IUB will rule. Because the imminent *IUB Order* impinges on rulemaking and policy issues actively under consideration by the FCC, and in which the Commission has occupied the field, the *IUB Order* will merit preemption.

E. THE ORDER THAT QWEST SEEKS FROM THE IUB WOULD STAND AS AN OBSTACLE TO THE ACCOMPLISHMENT AND EXECUTION OF FEDERAL LAW

As discussed above, Qwest is seeking relief from the IUB that is in excess of the Board's jurisdiction for no other purpose than to collaterally attack this Commission's decision in the *Farmers and Merchants* proceeding in particular, and the access charge regime in general. In establishing this system, the Commission expressly noted its concerns over the exact conduct Qwest is asking the IUB to validate: the IXCs' repeated use of "self-help" by simply refusing to pay tariffed access charges:

Reacting to what they perceive as excessive rate levels, the major IXCs have begun to try to force CLECs to reduce their rates. The IXCs' primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. Thus, Sprint has unilaterally recalculated and paid CLEC invoices for tariffed access charges based on what it believes constitutes a just and reasonable rate. AT&T, on the other hand, has frequently declined altogether to pay CLEC access invoices that it views as unreasonable. We see these

⁴⁶ *E.g.*, Docket No. 07-135, Comments of Qwest Communications International Inc. at 16 (FCSC is not a customer, is a "business partner"), at 24-27 ("Further steps are necessary to prevent CLECs from engaging in access stimulation.") (Dec. 17, 2007); Comments of AT&T Inc. at 19-32 (Commission should adopt rule changes "to prevent the significant harms caused by ILEC and CLEC access stimulation schemes") (Dec. 17, 2007).

developments as problematic for a variety of reasons. We are concerned that the IXCs appear routinely to be flouting their obligations under the tariff system. Additionally, the IXCs' attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts. And finally, the uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute.

Seventh Report and Order, 16 FCC Rcd. 9923, 9932, ¶ 23 (citations omitted).

This holding is consistent with decades of FCC precedent prohibiting self-help. The Commission's position on this matter has been stated repeatedly and unequivocally: "[T]he law is clear on the right of a carrier to collect its tariffed charges, even when those charges may be in dispute between the parties[.]" *Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone of Missouri, Inc.*, 4 FCC Rcd. 8338, 8339, ¶ 9 (1989) (*Tel-Central*); see also *Communique Telecommunications, Inc. DBA Logically*, 10 FCC Rcd. 10399, 10405, ¶ 36 (1995).

As the Commission also has held:

The Commission previously has stated that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.

Business WATS, Inc., v. AT&T Co., 7 FCC Rcd. 7942, ¶ 2 (1989) (citing *MCI Telecommunications Corporation, et al.*, 62 FCC 2d 703, ¶ 6 (1976) (hereinafter "*MCI Telecommunications Corp.*")); see also *National Communications Ass'n v. AT&T Co.*, No. 93 CIV. 3707, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001) (citing both cases).

The Bureau rejected Frontier's argument that a "dispute" as to a carrier's eligibility to receive compensation negates the IXC's obligation to pay compensation in the first instance. The Bureau stated that an IXC disputing the veracity of a LEC's certification must do so by initiating a proceeding at the Commission, e.g., through a Section 208 complaint against the LEC. We agree with the Bureau[.]

Bell Atlantic-Delaware v. Frontier Communications Services, Inc., 15 FCC Rcd. 7475, 7479-80, ¶ 9 (2000).

Qwest's invitation to the IUB to bless its anticompetitive behavior, however, would entirely undermine this Commission's precedent discussed above and threaten the ubiquity of the nation's telecommunications network. The concerted effort of the large IXCs to intimidate small, rural telephone companies into submission has had adverse effects across the nation. Qwest's proposed relief at the IUB would simply stand as an obstacle to resolve this nationwide problem. It is therefore incumbent upon this Commission, and not the IUB, to comprehensively address and reaffirm federal law.

F. BECAUSE THE SERVICES AT ISSUE ARE OVERWHELMINGLY INTERSTATE, THE STATE INTEREST IN THIS MATTER IS *DE MINIMIS*

As shown above, the great bulk of Qwest's arguments before the Board regard matters of interstate regulation: the propriety of relying on the Commission's rural exemption from the benchmark limit under the *CLEC Access Charge Order*; the use of numbering resources; and the so-called "revenue sharing" of interstate terminating access revenue. In addition, however, the types of traffic and amounts in controversy in Docket FCU 07-2 themselves demonstrate that the case is largely interstate.

Petitioners demonstrated in the record to the IUB that the conference and chat-line traffic in dispute between LECs and IXCs is overwhelmingly interstate in nature. In their written testimony to the IUB they demonstrated that 98% of their traffic terminated in Iowa is jurisdictionally interstate. At least one ILEC party to the proceeding offered to voluntarily refund the intrastate revenues it collected because they were insignificant compared to the legal costs the carrier would incur if forced to participate in the IUB's proceeding.⁴⁷ That request was summarily dismissed by the IUB.⁴⁸

⁴⁷ Motion to Dismiss Moot Complaint Against Reasnor Telephone Company, LLC (June 8, 2007).

⁴⁸ Order Denying Motion to Dismiss Moot Complaint, Granting Supplemental Motion to Compel, Denying Motion for Reconsideration, Granting Motion to Extend Hearing, and Setting Hearing, and Setting Amended Procedural Schedule (July 3, 2007).

The amount of intrastate access charges at issue in IUB Docket No. FCU-07-02 is *de minimis*. The amount of unpaid minutes invoiced by Petitioners — for which Qwest seeks to be excused from payment — are:

| | Intrastate Access | | Interstate Access | |
|-------------|-------------------|------|-------------------|-------|
| Great Lakes | \$64,248 | 3.6% | \$1,719,911 | 96.4% |
| Superior | \$16,033 | 0.9% | \$1,724,770 | 99.1% |

From these figures it is clear that there is no significant state interest that could compete with the federal interest in the issues before the Board.

CONCLUSION

For the reasons stated herein, the Commission should declare that all matters regarding interstate access services, including rates, tariffs, and revenues, are within the Commission's exclusive jurisdiction and may not be addressed by state agencies. In addition, the Commission should rule that any IUB order impinging on the Commission's interstate jurisdiction should be considered preempted.

August 14, 2009

Respectfully submitted,

By Ross A. Buntrock
Ross A. Buntrock
Jonathan E. Canis
Adam D. Bowser
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Counsel to
Great Lakes Communications Corp.
Superior Telephone Cooperative

CERTIFICATE OF SERVICE

I, Adam Bowser, do hereby certify that the foregoing **PETITION FOR DECLARATORY RULING TO THE IOWA UTILITIES BOARD AND CONTIGENT PETITION FOR PREEMPTION** was hand delivered on this 14th day of August 2009 to the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

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Legal Advisor for Wireline Competition and
International Issues
Federal Communications Commission
445 12th Street SW
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Chairman
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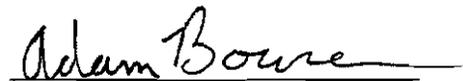

Adam Bowser

EXHIBIT A

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES DIVISION

-----x

IN RE: :

WEST COMMUNICATIONS CORPORATION, :

Complainant, :

vs. : DOCKET NO. :

FCU-07-2 :

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 : VOLUME I
 COMMUNICATION TECHNOLOGY, L.L.C., :

Respondents; :

-----x (Pages 1 - 775)

REASNOR TELEPHONE COMPANY, LLC, :

Counterclaimant, :

vs. :

WEST COMMUNICATIONS CORPORATION, :

Counterclaim Respondent :

-----x

COPY

Hearing Room, 350 Maple Street
Des Moines, Iowa
Thursday, February 5, 2009

Met, pursuant to notice, at 9:00 a.m.

BEFORE: THE IOWA UTILITIES BOARD

KRISTA K. TANNER, Board Member (Presiding)
 DARRELL HANSON, Board Member

EDIE SPRIGGS DANIELS - CERTIFIED SHORTHAND REPORTER
 EILEEN HICKS - CERTIFIED SHORTHAND REPORTER

PETERSEN COURT REPORTERS
 317 Sixth Avenue, Suite 606
 Des Moines, IA 50309-4155
 (515) 243-6596

1 application of the NECA rate band 8 rates by a number
2 of the LECs in this proceeding pursuant to the rural
3 exemption, which I believe a number of the LECs do
4 not qualify for.

5 Q. But the rate levels themselves are not being
6 challenged?

7 A. Well, they are in the sense that if-- The
8 rural exemption allows a rural LEC to set its rates
9 below a cap established by NECA rate band 8 if they
10 qualify for the exemption. If they don't qualify for
11 the exemption, then the rates are capped at an
12 interstate level at the incumbent LEC's rates, which
13 if it's Qwest's rate, that rate is .55 cents per
14 minute of use, which is substantially lower than NECA
15 rate band 8, so in that sense Qwest is addressing the
16 rates in this proceeding.

17 MR. HOLZ: Your Honor, may I address a
18 question for the purpose of clarification?

19 When the witness is discussing "LEC," you're
20 referring to CLECs and not LECs, correct?

21 THE WITNESS: Actually I'm referring to
22 ILECs. Excuse me. CLECs. You're right. I'm sorry.

23 BOARD MEMBER TANNER: Thank you, Mr. Holz.

24 THE WITNESS: Thank you.

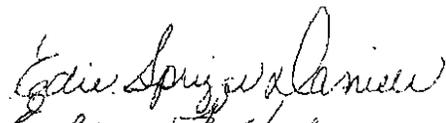
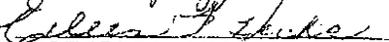
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C E R T I F I C A T E

1
2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that
4 I acted as the official court reporter at the hearing
5 in the above-entitled matter at the time and place
6 indicated;

7 That I took in shorthand all of the
8 proceedings had at the said time and place and that
9 said shorthand notes were reduced to typewriting
10 under my direction and supervision, and that the
11 foregoing typewritten pages are a full and complete
12 transcript of the shorthand notes so taken.

13 Dated at Des Moines, Iowa, this 9th day of
14 February, 2009.

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17 
18 CERTIFIED SHORTHAND REPORTER

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES DIVISION

-----x
IN RE: :
: :
QWEST COMMUNICATIONS CORPORATION, :
: :
Complainant, :
vs. : DOCKET NO.
: FCU-07-2
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 : VOLUME I
COMMUNICATION TECHNOLOGY, L.L.C., :
: :
Respondents; :
-----x (Pages 1 - 775)
REASNOR TELEPHONE COMPANY, LLC, :
: :
Counterclaimant, :
vs. :
: :
QWEST COMMUNICATIONS CORPORATION, :
: :
Counterclaim Respondent :
-----x

COPY

Hearing Room, 350 Maple Street
Des Moines, Iowa
Thursday, February 5, 2009

Met, pursuant to notice, at 9:00 a.m.

BEFORE: THE IOWA UTILITIES BOARD

KRISTA K. TANNER, Board Member (Presiding)
DARRELL HANSON, Board Member

EOIE SPRIGGS DANIELS - CERTIFIED SHORTHAND REPORTER
EILEEN HICKS - CERTIFIED SHORTHAND REPORTER

PETERSEN COURT REPORTERS
317 Sixth Avenue, Suite 606
Des Moines, IA 50309-4155
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1 thus interstate access charges do not apply to
2 traffic that's delivered to those partners.

3 Q. And I draw your attention, sir, to page 67
4 of your direct testimony, at lines 17 to 19.

5 A. Yes.

6 Q. You state, "None of the LECs charged their
7 ECSC partners these fees, further establishing that
8 the ECSCs are not end-user customers."

9 A. Okay.

10 Q. Now, the EDCL is designed for a carrier to
11 recover the costs of provisioning a line to a person
12 to provide service.

13 A. To recover a portion of that cost, yes.

14 Q. It's a type of common-line charge?

15 A. Correct.

16 Q. Are you aware, sir, that the FCC does not
17 require competitive carriers to impose a common-line
18 charge?

19 A. Yes.

20 Q. So is the FCC creating a situation where
21 carriers have no end users?

22 A. Well, the question is an interpretation of
23 the CLC's interstate tariff.

24 The language we quoted here is in their
25 tariff, and the whole question in this proceeding is

1 does that tariff, that interstate tariff, apply to
2 the traffic that Qwest has delivered to the LECs, and
3 if that tariff says that end users are established by
4 the purchase of local-exchange service from the LEC's
5 local-exchange tariff and by the application of an
6 end-user common-line charge, then those are
7 requirements before those end users can be considered
8 for the application of switched access charges.

9 If the CLEC chooses not to apply the end-
10 user common-line charge--and I haven't looked at
11 those rules, but if they're free not to do so, then
12 they need to modify their tariff to indicate that in
13 the instance where they waive these charges--and
14 there is no such language in the tariff that I've
15 seen--that the end users are still end users for the
16 purposes of access charges.

17 Q. So a carrier can, if it chooses, impose a
18 common-line charge in its tariff?

19 A. Well, that's your language. I haven't seen
20 the FCC rules that either require or don't require
21 the application of end-user common-line charges by
22 CLECs, but the fact is I've looked at their tariffs.
23 The tariffs require the application of an end-user
24 common-line charge to end users, and they have not
25 done so.

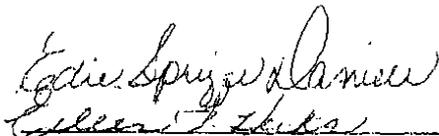
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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated;

That I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 9th day of February, 2009.


Eddie Spriggs
CERTIFIED SHORTHAND REPORTER

1 BOARD MEMBER TANNER: I don't see anyone
2 taking notes. It is a possibility, you say?

3 THE WITNESS: I think that's a possibility,
4 yes.

5 BOARD MEMBER TANNER: Okay. Also on page
6 117 of your direct testimony you recommend the Board
7 prohibit LECs from participating in traffic
8 laundering. Again, if the Board only has intrastate
9 access jurisdiction, how would this resolve the
10 larger problem which also seems to be on the
11 interstate access side?

12 THE WITNESS: This you could solve both on
13 the interstate and intrastate side because you have
14 control over the telephone numbers that are assigned
15 to the LECs. You also have control over the
16 certification of the LECs in terms of what
17 territories they can serve.

18 So if we use Superior as an example, this
19 Board assigned telephone numbers for Superior's use
20 in the Superior exchange, but what they're doing is
21 now using those numbers to provide service in the
22 Great Lakes/Spencer exchange, so if you were to find
23 that they were using their numbers inappropriately,
24 they would not be able to use those numbers for
25 either intrastate or interstate traffic delivered to

C E R T I F I C A T E

1
2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that
4 I acted as the official court reporter at the hearing
5 in the above-entitled matter at the time and place
6 indicated;

7 That I took in shorthand all of the
8 proceedings had at the said time and place and that
9 said shorthand notes were reduced to typewriting
10 under my direction and supervision, and that the
11 foregoing typewritten pages are a full and complete
12 transcript of the shorthand notes so taken.

13 Dated at Des Moines, Iowa, this 11th day of
14 February, 2009.

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18 CERTIFIED SHORTHAND REPORTER
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STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES DIVISION

COPY

-----x
 IN RE: :
 :
 QWEST COMMUNICATIONS CORPORATION, :
 :
 Complainant, :
 vs. : DOCKET NO.
 : FCU-07-2
 SUPERIOR TELEPHONE COOPERATIVE; THE :
 FARMERS TELEPHONE COMPANY OF RICEVILLE, :
 IOWA; THE FARMERS & MERCHANTS MUTUAL :
 TELEPHONE COMPANY OF WAYLAND, IOWA; :
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 COMMUNICATION TECHNOLOGY, L.L.C., :
 :
 Respondents; :
 -----x (Pages 776-1094)
 REASNOR TELEPHONE COMPANY, LLC, :
 :
 Counterclaimant, :
 vs. :
 :
 QWEST COMMUNICATIONS CORPORATION, :
 :
 Counterclaim Respondent :
 -----x

Hearing Room, 350 Maple Street
Des Moines, Iowa
Friday, February 6, 2009

Met, pursuant to adjournment, at 8:30 a.m.

BEFORE: THE IOWA UTILITIES BOARD

KRISTA K. TANNER, Board Member (Presiding)
DARRELL HANSON, Board Member

JACKIE M. SINNOTT - CERTIFIED SHORTHAND REPORTER
EILEEN HICKS - CERTIFIED SHORTHAND REPORTER

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1 Go ahead, Mr. Steese.

2 MR. STEESE: May I use the podium?

3 BOARD MEMBER TANNER: You may.

4 REDIRECT EXAMINATION

5 BY MR. STEESE:

6 Q. Good morning, Mr. Owens.

7 A. Good morning.

8 Q. I would like to start on redirect with some
9 questions from today's--specifically a question asked
10 by Board Member Krista Tanner, and she said what
11 ability, if any, does this Board have to prevent
12 revenue sharing at both the intra and interstate
13 levels, and you contemplated it was intrastate only.
14 Do you recall that?

15 A. Correct.

16 Q. Does the Board have the ability to prevent
17 discrimination of all types?

18 A. I believe the rules of the Iowa Board give
19 it that authority, yes.

20 Q. Does the concept of revenue sharing, as we
21 have in this case, contain facts where the local
22 exchange carrier defendants are using revenues from
23 the interstate access regime to provide kickbacks to
24 their free calling partners?

25 A. In every instance, yes.

1 Q. And given the Board has jurisdiction over
2 discrimination, have you rethought your answer to
3 Board Member Tanner?

4 A. Yes. One additional tool the Board has to
5 consider the issues in this case is if it determines
6 that the LECs are discriminating amongst customers in
7 Iowa by giving--sharing switched access charges with
8 some parties, but not others, because of the use of
9 switched access services to facilitate that
10 discrimination, then it could order that such
11 discrimination cease, which would prevent the LECs
12 from using their interstate tariffs in that manner.

13 So another way of putting it, they're using
14 the interstate tariff to facilitate discrimination.

15 Q. Then do you recall--changing subjects--
16 questions by Mr. Lee relating to the definition of
17 exchange access?

18 A. Yes, I do.

19 Q. And I don't believe it was marked as an
20 exhibit, but you can see the definition of exchange
21 access on the top from the Act, and do you see that
22 the definition of exchange access includes the words
23 "telephone exchange services"? Do you see that,
24 Mr. Owens?

25 A. I'm confused as to what this is.

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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated;

That I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 11th day of February, 2009.

Jackie M. Semick
CERTIFIED SHORTHAND REPORTER

COPY

1095

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES DIVISION

-----x

IN RE: :

QWEST COMMUNICATIONS CORPORATION, :

Complainant, :

vs. : DOCKET NO. :

SUPERIOR TELEPHONE COOPERATIVE; THE : FCU-07-2 :

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 : VOLUME III :

COMMUNICATION TECHNOLOGY, L.L.C., : :

Respondents; :

-----x (Pages 1095-1451)

REASNOR TELEPHONE COMPANY, LLC, :

Counterclaimant, :

vs. : :

QWEST COMMUNICATIONS CORPORATION, : :

Counterclaim Respondent : :

-----x

Hearing Room, 350 Maple Street
Des Moines, Iowa
Monday, February 9, 2009

Met, pursuant to adjournment, at 8:30 a.m.

BEFORE: THE IOWA UTILITIES BOARD

KRISTA K. TANNER, Board Member (Presiding)
DARRELL HANSON, Board Member

JACKIE M. SINNOTT - CERTIFIED SHORTHAND REPORTER
EDIE SPRIGGS DANIELS - CERTIFIED SHORTHAND REPORTER

PETERSEN COURT REPORTERS
317 Sixth Avenue, Suite 606
Des Moines, IA 50309-4155
(515) 243-6596

1 do you know the total amount of revenue that Qwest
2 earned for the traffic at issue in this case
3 factoring in both the off-netting revenue that we
4 just discussed, plus the long-distance toll revenue?

5 A. I do not.

6 Q. Now, in your direct testimony you put forth
7 a \$25 million amount of costs paid by Qwest for the
8 traffic at issue in this case. Did you personally
9 have any involvement in calculating that figure?

10 A. I did not personally calculate it. One of
11 the folks that reports to me did.

12 Q. Do you know whether that figure represents
13 both intra- and interstate traffic?

14 A. Yes, it would.

15 Q. It would involve both?

16 A. Yes.

17 Q. As far as you know, has there been a
18 separate figure computed solely for the intrastate
19 costs incurred by Qwest in this case?

20 A. Not to my knowledge. I don't know.

21 Q. And I believe you testified to this earlier,
22 but I need to ask it to make sure. That cost figure
23 contained in your testimony represents a nationwide
24 basis, not an Iowa-specific one, correct?

25 A. Correct.