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CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

ROBERT B. BERNTSEN, CHAIR
KRISTA K. TANNER, BOARD MEMBER
DARRELL HANSON, BOARD MEMBER

September 24, 2009

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 – 12th Street, S.W.
Washington, DC 20554

Karen Majcher
Vice President, High Cost & Low Income Division
Universal Service Administrative Company
2000 L Street, NW – Suite 200
Washington, DC 20036

Re: Certification Of High Cost Support For Rural Carriers and Competitive ETCs Pursuant To 47 C.F.R. § 54.314, CC Docket No. 96-45

Dear Ms. Dortch / Ms. Majcher:

The Iowa Utilities Board (Board) certifies that all federal high cost support provided to rural carriers and competitive ETCs in this state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act of 1934, as amended. This includes High Cost Loop support (HCL), Local Switching Support (LSS), and high cost support received pursuant to the purchase of exchanges. The Board bases this certification on the individual carrier certifications filed with the Board.

The Board notes that Aventure Communication Technology LLC (Aventure) (SAC 359094) has been included with the list of certified carriers based solely on Aventure's sworn affidavit that support is being used as intended. In the September 23, 2008, ETC certification letter, the Board stated that Aventure's federal universal service support became an issue in Docket No. FCU-07-2. On September 21, 2009 the Board issued its Final Order in Docket No. FCU-07-2. The Final Order is attached and can also be accessed electronically at https://efs.iowa.gov/efiling/groups/external/documents/docket/023026.pdf. Pages 62 to 64 address Aventure's receipt of universal service funds.

In Docket No. FCU-07-2, there are allegations that Aventure: 1) has received the majority of its USF support for conferencing services; 2) that the line counts

Aventure submitted for USF purposes may have also included a substantial number of test lines; and 3) that Aventure may have overstated to the FCC the actual number of exchanges it serves. The Board ruled in Docket No. FCU-07-2 that none of the conferencing services associated with Aventure are end-user customers pursuant to Aventure's intrastate access or local exchange tariffs. The Board also ruled that none of the intrastate toll traffic associated with Aventure's conferencing services terminated at an end user's premises as required by the switched access tariffs.

What was left unresolved is whether the line counts that Aventure has submitted to the FCC (which include non-end user conferencing services and potentially test lines) means that Aventure is using its federal universal service support as intended. The Board has left this determination to the FCC and USAC. Nevertheless, if the FCC or USAC require additional background on this matter beyond what is contained in the Final Order, please contact me regarding any assistance that we may provide.

Attached is the list of carriers certified by the Board pursuant to section 54.314 of the FCC's rules (47 C.F.R. § 54.314), which requires states to establish an annual certification process for carriers receiving federal high cost support. As requested by the Universal Service Administrative Company, listed beside each carrier is its assigned study area code (SAC), if known.

If you have questions concerning this matter, please contact Jim Langenberg, a member of the Iowa Utilities Board's staff at (515) 281-5695 or e-mail jim.langenberg@iub.state.ia.us.

Sincerely,

Judi K. Cooper

Judi K. Cooper
Executive Secretary
attachments

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Carrier:	SAC
Ace Telephone Association	351346
Alliance Communications Cooperative, Inc.	391642
Alpine Communications, LC	351106
Andrew Telephone Company	351097
Arcadia Telephone Cooperative	351098
Atkins Telephone Company, Inc.	351101
Ayrshire Farmers Mutual Telephone Company	351105
Baldwin Nashville Telephone Company, Inc.	351107
Barnes City Cooperative Telephone Company	351108
Bernard Telephone Company, Inc.	351110
Breda Telephone Corporation d/b/a Western Iowa Networks	351112
Brooklyn Mutual Telephone Company	351113
Titonka-Burt Communications fka The Burt Telephone Company	351114
Butler-Bremer Mutual Telephone Company	351115
C-M-L Telephone Cooperative Association	351133
Cascade Communications Company	351118
Casey Mutual Telephone Company	351119
Center Junction Telephone Company	351121
Central Scott Telephone Company	351125
CenturyTel of Postville, Inc.	351274
CenturyTel of Chester, Inc.	351126
Citizens Telecommunications Company of Minnesota, Inc.	367123
Citizens Mutual Telephone Cooperative	351129
Clarence Telephone Company, Inc.	351130
Clear Lake Independent Telephone Company	351132
Colo Telephone Company	351134
Communications 1 Network, Inc.	351262
Coon Creek Telephone Company	351136
Coon Valley Cooperative Telephone Assn. Inc.	351137
Cooperative Telephone Exchange	351303
Cooperative Telephone Company	351139
Corn Belt Telephone Company	351141
Cumberland Telephone Company	351146
Danville Mutual Telephone Company	351147
Defiance Telephone Company	351149
Dixon Telephone Company	351150
Dumont Telephone Company	351152
Dunkerton Telephone Cooperative	351153
East Buchanan Telephone Cooperative	351156
Ellsworth Cooperative Telephone Association	351157

Farmers Telephone Company (Nora Springs, Iowa)	351177
Farmers Telephone Company (Essex, Iowa)	351176
Farmers Telephone Company (Batavia, Iowa)	351175
Farmers Mutual Telephone Company (Jessup, Iowa)	351171
Farmer's Mutual Cooperative Telephone Company (Moulton, Iowa)	351169
Farmer's and Businessmen's Tel. Co. d/b/a F & B Communications	351160
Farmers Cooperative Telephone Company	351162
Farmers Mutual Telephone Company (Nora Springs, Iowa)	351172
Farmers Mutual Telephone Cooperative (Shellsburg, Iowa)	351173
Farmers & Merchants Mutual Telephone Company	351166
Farmers Mutual Telephone Company (Stanton, Iowa)	351174
Farmers Mutual Cooperative Telephone Company	351168
Fenton Cooperative Telephone Company	351179
Frontier Communications of Iowa, Inc.	351127
Goldfield Telephone Company	351188
Grand Mound Cooperative Telephone Association	351191
Griswold Cooperative Telephone Company	351195
Grand River Mutual Telephone Corporation	351888
Hawkeye Telephone Company	351199
Heart of Iowa Communications Cooperative	351297
Heartland Telecommunications Company of Iowa (d/b/a HickoryTech)	351096
Hills Telephone Company, Inc. d/b/a Alliance Communications	351405
HTC Communications	351202
Hubbard Cooperative Telephone Association	351203
Huxley Communications Cooperative	351205
IAMO Telephone Company	351206
Interstate 35 Telephone Company	351209
Jefferson Telephone Company	351212
Jordan Soldier Valley Telephone Company	351213
Kalona Cooperative Telephone Company	351214
Killduff Telephone Company	351407
Keystone Farmers Cooperative Telephone Company	351217
La Motte Telephone Company Inc.	351222
La Porte City Telephone Co.	351220
Lehigh Valley Coop. Telephone Association	351225
Liberty Communications	351332
Lone Rock Cooperative Telephone Company	351228
Lost Nation-Elwood Telephone Company	351229
Lynnville Telephone Company	351232
Mabel Cooperative Telephone Company	351424
Manilla Telephone Company	351235
Marne & Elk Horn Telephone Company	351237
Martelle Cooperative Telephone Association	351238

Massena Telephone Company	351239
Mediapolis Telephone Company	351251
Mechanicsville Telephone Company	351241
Miles Cooperative Telephone Association	351242
Miller Telephone Company	351243
Minburn Telecommunications, Inc.	351158
Minburn Telephone Company	351245
Minerva Valley Telephone Company, Inc.	351246
Modern Cooperative Telephone Company	351247
Montezuma Mutual Telephone Company	351248
Mutual Telephone Company of Morning Sun	351250
Mutual Telephone Company	351252
Northeast Iowa Telephone Company	351230
North English Cooperative Telephone Company	351257
Northern Iowa Telephone Company	351259
Northwest Iowa Telephone Company	351260
Northwest Telephone Cooperative Association	351261
Ogden Telephone Company	351263
Olin Telephone Co. Inc.	351264
Onslow Cooperative Telephone Association	351265
Oran Mutual Telephone Company	351266
Palmer Mutual Telephone Co.	351270
Palo Cooperative Telephone Assn.	351269
Panora Cooperative Telephone Association, Inc.	351271
Partner Communications Cooperative	351187
Peoples Telephone Company	351273
Prairie Telephone Co., Inc.	351344
Prairieburg Telephone Co., Inc.	351275
Preston Telephone Company	351276
Radcliffe Telephone Company	351277
Readlyn Telephone Company	351278
Reasnor Telephone Company LLC	350739
Ringsted Telephone Company	351280
River Valley Telecommunications Coop	351189
Rockwell Cooperative Telephone Association	351282
Royal Telephone Company	351283
River Valley Telecommunications Coop	351284
Sac County Mutual Telephone Company	351285
Schaller Telephone Company	351291
Scranton Telephone Company	351294
Searsboro Telephone Company, Inc.	351292
Sharon Telephone Company	351293
Shell Rock Communications, Inc.	351295

South Central Communications, Inc.	351888
South Slope Cooperative Telephone Company	351298
Southwest Telephone Exchange, Inc.	351301
Springville Cooperative Telephone Association, Inc.	351302
Sully Telephone Association, Inc.	351306
Superior Telephone Cooperative	351307
Stratford Mutual Telephone Company	351305
Swisher Telephone Company	351304
Templeton Telephone Company	351308
Terril Telephone Cooperative	351309
Titonka Telephone Company	351310
United Farmers Telephone Company	351316
Universal Communications of Allison	351152
Van Buren Telephone Company, Inc.	351319
Van Horne Cooperative Telephone Company	351320
Ventura Telephone Company	351322
Villisca Farmers Telephone Company	351324
Walnut Telephone Company	351326
Webb-Dickens Telephone Corporation	351327
Wellman Cooperative Telephone Association	351329
Webster-Calhoun Cooperative Telephone Association	351328
West Iowa Telephone Company (d/b/a WesTel Systems)	351331
Western Iowa Telephone Association	351334
Westside Independent Telephone Company	351335
WTC Communications	351336
Winnebago Cooperative Telephone Association	351337
Woolstock Mutual Telephone Association	351342
Wyoming Mutual Telephone Company	351343

CETCs

Advanced Network Communications	359055
Algona Municipal Utilities	359069
Aventure Communication Technology, LLC (see explanation)	**359094**
Alta Municipal Broadband Communication Utility	359024
Baldwin-Nashville Telephone Co., Inc.	359087
Barnes City Cooperative Telephone Co. Wireless Division	359075
Bernard Communications Inc.	359103
Brooklyn Mutual Telecommunications Coop.	359047
BTC, Inc. d/b/a Western Iowa Networks	359077
C-M-L Telephone Cooperative Ass'n	tbd
CCM Wireless, Inc	359102
CST Communications	359032

Cedar Communications, LLC	359067
Cedar County PCS, LLC	359046
Cedar-Wapsie Communications, Inc.	359084
Center Junction Telephone Company, Inc.	359090
City of Hawarden (d/b/a HITEC)	359001
Clay County Communications	359111
The Community Cable Television Agency of O'Brien County	359022
Community Digital Wireless	359044
Comm Choice of Iowa	359062
Communications 1 Network (Comm 1 Wireless)	359098
Communications Network, Inc.	359104
Coon Creek Telecommunications	359009
Coon Rapids Municipal Utilities	359003
Cooperative Telephone Company	359030
D-C Communications	359081
Dallas County Wireless	359110
Dumont Wireless	359083
East Buchanan Telephone Cooperative	359036
FMTC Wireless, Inc.	359082
F & B Communications, Inc.	359007
Farmers Mutual Cooperative Telephone Company-wireline	359059
Farmers Mutual Cooperative Telephone Company-wireless	359059
Fibercomm, LC	359025
Goldfield Access Network, LC	359020
Grand Mound Communications Company	359079
Grundy Center Communication Utility	359014
Guthrie Telecommunications Network, Inc.	359051
Hardin County Wireless	359100
Harlan Municipal Utilities	359015
Hospers Telephone Company (HTC Communications)	359112
Huxley Communications Cooperative	359052
Independent Networks, LC	359006
Iowa RSA 2 L.P. d/b/a Lyrix Wireless	359053
Iowa 8 – Monona Limited Partnership	359071
Iowa RSA 10 General Partnership	359072
Iowa Wireless Services LLC (d/b/a i wireless)	359027
KCTC PCS	359037
Laurens Municipal Broadband Communications Utility	359002
Long Lines Wireless	359101
Long Lines Metro	359068
Louisa Communications	359018
MAC Wireless, LLC	359028
Manning Municipal Communications & Television System Utility	359013

Mapleton Communications Management Agency	359063
Marne & Elk Horne Telephone Company	359078
Midwest Wireless Iowa L.L.C.	359010
Mill Valley Wireless	359034
Modern Communications, Inc.	359109
Montezuma Mutual Telephone Company	359033
NPCR Inc. (d/b/a Nextel Partners)	359060
North Central Wireless	359107
Northeast Iowa Telephone Company (NEIT Mobile, LLC)	359043
Ogden Telephone Company (Wireless)	359089
Olin Telephone Company, Inc.	359031
OmniTel Communications	359011
Onslow Cooperative Tel Assn. (Onslow Wireless)	359088
Orange City Communications	359061
Osage Municipal Communications Utility	359048
Premier Wireless, Inc.	359114
Radcliffe Telephone Co., Inc. (Wireless)	359092
RSA #1 Limited Partnership	359054
RSA 7 Limited Partnership	359070
Rockwell Cooperative Tel. Assn. (Wireless)	359086
Rolling Hills Communications, Inc.	359095
SEI Wireless LLC	359045
Sharon Telephone Company	359038
SkyLink, L.C.	359113
South Slope Cooperative Telephone Company	359008
Southeast Wireless, Inc.	359029
Spencer Municipal Communication Utility	359021
Terril Communications, LLC	tbd
U.S. Cellular Corporation	359016
Verocity Wireless d/b/a Benton Linn Wireless, LLC	359042
Van Buren Wireless, Inc.	359091
Walnut Telephone Co. d/b/a Walnut Communications	359099
Wapsi Wireless, LLC	359041
Wellman Cooperative Telephone Association	359039
West Iowa Wireless, LLC	359105
WWC License LLC (d/b/a Alltel)	359017
WTC Communications Inc.	359040
Winnebago Cooperative Tel. Assn.	359004
Winnebago Cooperative Tel. Assn. (Wireless)	359093

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: QWEST COMMUNICATIONS CORPORATION, Complainant, vs. SUPERIOR TELEPHONE COOPERATIVE; THE FARMERS TELEPHONE COMPANY OF RICEVILLE, IOWA; THE FARMERS & MERCHANTS MUTUAL TELEPHONE COMPANY OF WAYLAND, IOWA; INTERSTATE 35 TELEPHONE COMPANY, d/b/a INTERSTATE COMMUNICATIONS COMPANY; DIXON TELEPHONE COMPANY; REASNOR TELEPHONE COMPANY, LLC; GREAT LAKES COMMUNICATION CORP.; AND AVENTURE COMMUNICATION TECHNOLOGY, LLC, Respondents;	DOCKET NO. FCU-07-2
REASNOR TELEPHONE COMPANY, LLC, Counterclaimant, vs. QWEST COMMUNICATIONS CORPORATION AND QWEST CORPORATION, Counterclaim Respondents.	

FINAL ORDER

(Issued September 21, 2009)

SUMMARY[1]

This order addresses a formal complaint that QCC filed against eight local exchange carriers alleging that they engaged in a deliberate plan to dramatically increase the amount of terminating access traffic delivered to their exchanges via agreements with conference calling companies. AT&T and Sprint intervened in the complaint.

QCC alleges that the Respondents in this case attempted to manipulate the access charge regulatory system in order to collect millions of dollars from interexchange carriers (IXCs) at rates that far exceeded the cost of providing switched access services. They started with access rates that were indirectly based on their cost of providing low volumes of access services, then entered into agreements with free conference calling companies that were intended to increase traffic volumes by 10,000 percent or more at the same rates, when the total cost of providing access service had not increased significantly.

In this order, the Board finds that the Respondents failed to comply with the terms and conditions of their own intrastate access tariffs, so the calls in question were not subject to access charges and refunds and credits are required. The conference calling companies were not "end users" as defined in the access tariffs because they did not order, purchase, get billed for, or pay for local exchange service. Calls to the conference bridges were not terminated at the end user's premises, as required by the tariff. Many of the calls were laundered in an attempt to make it appear they were terminated in one Respondent's exchange, when in fact they were terminated in another exchange where the Respondent was not authorized to provide service.

When QCC filed complaints with the Board and with the Federal Communications Commission (FCC), some of the Respondents attempted to manufacture evidence to make it appear that they had complied with their tariffs when they had not.

Based on the record in these proceedings, the Board finds that the intrastate interexchange calls to the conference calling companies were not subject to access charges. Refunds and credits to the IXCs are ordered. The Board also announces that it is initiating a proceeding to consider proposed rules intended to prevent this abuse in the future.

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[1] This summary is provided for the convenience of the reader. It is not a substitute for the more complete analysis in the full order and in no way limits or alters the full order. As a summary, it is more informal and less accurate than the full order.

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STATEMENT OF THE CASE

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

In support of its complaint, QCC claims that the Respondents are engaging in a fraudulent practice that involves free conference calls, chat rooms, pornographic calling, podcasts, voice mail, and international calling services. QCC asserts that the Respondents partnered with free calling service companies (FCSCs), which are based in large metropolitan areas such as Los Angeles, California, Las Vegas, Nevada, and Salt Lake City, Utah, and use conference bridges, chat line computers, and routers in Iowa.

OVERVIEW

QCC characterizes this practice as "traffic pumping." This section will provide an overview of the traffic pumping scheme as alleged by QCC.

The scheme originates with local exchange carrier (LEC) members of the National Exchange Carrier Association (NECA) traffic sensitive pool for interstate access charges. The NECA pool generally ensures that a LEC will receive a minimum amount of access revenues, but excess access billings must be shared with other LECs that are also members of the pool. (Tr. 972-73). Carriers are allowed to opt-out of the NECA pool but continue to use NECA rates for a maximum period of two years and, during this time, the carriers may keep all of their access billings. (Id.). After two years, carriers that have opted out of the NECA pool must re-enter the pool or be able to support their rates. Without evidentiary support for the existing rates, the LEC's access rates would be reduced to a level that can be supported. (Id.).

The fundamentals of traffic pumping begin with an incumbent local exchange carrier (ILEC) with relatively high terminating switched access rates, or a competitive local exchange carrier (CLEC) either benchmarking off a rural ILEC or claiming it is otherwise entitled to charge a higher access rate. (Id.). The LEC enters into an arrangement with either a broker or directly with one or more FCSCs. (Id.). The FCSC sends equipment such as conference bridges, chat line computers, or routers to the LEC. (Id.). The LEC installs that equipment in its central office and then

assigns large blocks of telephone numbers to the FCSC. (QCC Initial Brief, p. 2). The FCSC advertises the numbers on its Web sites to encourage people from Iowa and throughout the country to call the Iowa numbers to receive the FCSC's calling services free of charge. (Id.). This allows people to obtain free conference calling, free international calling, and free calling to pornographic content numbers. (Id.). This scenario creates a substantial increase in the long distance traffic to the LEC's numbers, sometimes 100-fold. (Id.).

The IXCs then are required to deliver calls destined for these telephone numbers to the Iowa LECs. (Id.). The LECs bill the IXCs for that traffic using relatively high interstate switched access rates ($0.05 to $0.13 per minute) that were filed in individual tariffs after opting out of the NECA pool and similarly high intrastate switched access rates (approximately $0.09 per minute). (Id.). The Federal Communications Commission (FCC) and the Board allowed high rural LEC access rates based on the assumption that rural LECs receive low long distance traffic volumes due to the small number of end users in their rural exchange areas, which are generally expensive to serve. (Id.). By opting out of the NECA pool, the LECs are able to keep all of the additional revenue for themselves instead of sharing it with other members of the pool. However, if the LECs stay out of the NECA pool longer than two years, they have to recalculate their interstate rates based on the actual volumes produced by this traffic pumping scheme, which would lower access rates from over $0.05 per minute to fractions of a penny. (Id.).

IXCs would deliver their long distance customers' calls to these LECs and the LECs would, in turn, bill the IXCs for terminating switched access for all of the calls associated with the FCSCs with whom they did business. (Id.). After the IXCs pay the access charges, the LECs kickback a portion of those revenues to their FCSC partners as part of a marketing fee. (Id.). Therefore, traffic pumping presents a situation where LECs bill IXCs for a monopoly service (access) and use a portion of the money generated from the monopoly service to support a competitive service (conference, chat, international, and credit card calling) that generates the abnormally high volume of incoming calls, forcing the IXCs to use and pay for the monopoly service. (Id.).

In addition, traffic pumping can lead to other schemes, such as the improper backdating of invoices and contracts, traffic laundering, telephone numbering abuses, and potentially misrepresented universal service fund (USF) certifications. (Id. at 4-5). For example, LECs failed to bill FCSCs for any local exchange services then issued backdated invoices and contract amendments suggesting that the services were charged but were netted against the FCSCs' marketing services. Other LECs pretended to switch and route the traffic into their own exchanges, but in fact, allowed the traffic to be switched in another LECs' exchange, even though the first LEC claimed credit for and billed for the traffic.

PROCEDURAL HISTORY

QCC filed its complaint with the Board in February 2007, alleging that the Respondents engaged in traffic pumping. QCC alleges that traffic pumping, as described above, is inconsistent with the switched access services language of the Iowa Telecommunications Association Tariff No. 1 (ITA Tariff) to which the Respondents subscribe. (QCC Complaint, p. 12). Section 1.1 of the ITA Tariff states:

> [T]he provision of [switched access service] is specifically intended to provide exchange network access to [interexchange carriers delivering intrastate switched access traffic] for their own use or in furnishing their authorized intrastate services to End Users, and for operational purposes directly related to the furnishing of their authorized services. Operational purposes include testing and maintenance circuits, demonstration and experimental services and spare services.

(Id.). QCC claims that the revenue received by the Respondents is not being used for the purposes stated in the ITA Tariff. In addition, the Respondents are charging QCC for terminating calls via their intrastate tariffs for calls that are actually terminated outside of the Respondents' local calling areas as specified in their certificates issued pursuant to Iowa Code § 476.29. (Id. at 13).

QCC also alleged that the Respondents are unlawfully discriminating against their other customers when they share revenues on a preferential basis with the FCSC customers and that the arrangements between the Respondents and the

FCSCs constitute an unfair and unreasonable practice under Iowa Code § 476.5 and 199 IAC 22.1(1)"a" and "d." (Id. at 14).

On March 12, 2007, Reasnor filed a motion for summary judgment with the Board and sought dismissal from this case, stating that it provides legitimate access service to QCC and that the Board does not have the authority to regulate the rates of small ILECs such as Reasnor.

On March 30, 2007, Superior, Great Lakes, and Aventure filed a joint motion to dismiss alleging the Board lacks the jurisdiction to regulate the rates of small LECs and therefore lacks the jurisdiction to hear QCC's complaint.

Also on March 30, 2007, Farmers-Riceville, Farmers & Merchants, Interstate, and Dixon filed a joint motion to dismiss QCC's complaint, stating that the Board does not have jurisdiction over the rates that QCC is being charged by these LECs for terminating access.

On May 25, 2007, the Board issued an order denying Reasnor's motion for summary judgment and the other motions to dismiss, stating that there were genuine issues of material fact regarding the issues raised by QCC in its petition and by the Respondents' local and intrastate access service tariffs. The Board also determined that it has the authority to hear QCC's complaint as it relates to intrastate traffic.

On July 17, 2007, Reasnor filed an answer to QCC's complaint. As part of its answer, Reasnor made certain counterclaims against QCC, alleging: 1) unlawful self-help, 2) unlawful discrimination by revenue sharing and service discounts, and 3)

unreasonable practices. QCC responded to the counterclaims on August 7, 2007, and Reasnor amended its counterclaims on August 21, 2007, to add Qwest Corporation and its affiliates as respondents.[2]

AT&T Communications of the Midwest, Inc., and TCG Omaha (collectively AT&T) and Sprint Communications Company L.P. (Sprint) intervened on October 16 and October 19, 2007, respectively.

On November 15, 2007, the Board issued an order stating that the counterclaims against Qwest Corporation are improper in this case, but that the counterclaims against QCC are properly a part of this action.

Pursuant to the procedural schedule established and amended in this proceeding, QCC, Sprint, and AT&T filed their prepared direct testimony, with supporting exhibits and workpapers, on March 17, 2008. The Respondents filed their rebuttal testimony on or about September 15, 2008, and Qwest, Sprint, and AT&T filed their reply testimony on or about October 15, 2008.

A hearing to receive all pre-filed testimony and allow for the cross-examination of all witnesses was held February 5 through 12, 2009.

Initial briefs were filed by QCC, Sprint, AT&T, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), and the Respondents on or about March 31, 2009. Reply briefs were filed on or about April 30, 2009.

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[2] While Reasnor's initial counterclaims involved only QCC, as this case developed, Reasnor's counterclaims also included an unlawful self help claim against Sprint.

On August 17, 2009, after the Board's public meeting to discuss the decision in this case, Great Lakes and Superior filed a motion for stay of these proceedings based upon a petition filed with the FCC on August 14, 2009.

JURISDICTION

QCC filed its complaint pursuant to Iowa Code §§ 476.2, 476.3, and 476.5, 199 IAC chapters 4 and 7, and 199 IAC 22.14, alleging violations of the terms, conditions, and application of the Respondents' intrastate tariffs. QCC, Sprint, and AT&T (hereinafter collectively referred to as the interexchange carriers (IXCs)) argue that the Respondents failed to comply with the requirements of their intrastate access service tariffs in connection with the FCSCs and seek, in part, refunds of all switched access charges associated with the delivery of intrastate traffic to numbers or destinations associated with FCSCs.

The Respondents argue that their tariffs were properly applied to the FCSCs, that the IXCs must pay the intrastate switched access rates billed to them, and that the Board does not have the authority to regulate their access service rates.

The Board finds that it has the authority to interpret the LECs' intrastate access service tariffs, apply those terms to the facts of this case, as found by the Board after notice and hearing, and to order relief in the form of refunds, if appropriate.

Public utilities in Iowa, including LECs, are required to comply with the terms and conditions of their tariffs, pursuant to the first unnumbered paragraph of Iowa Code § 476.5:

> No public utility subject to rate regulation shall directly or indirectly charge a greater or less compensation for its services than that prescribed in its tariffs, and no such public utility shall make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

The Board finds that the LEC Respondents are public utilities "subject to rate regulation" for purposes of this case. Iowa Code § 476.11 states, in relevant part, that

> Whenever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

When a complaint between two or more telephone companies is filed with the Board, the Board has the authority under § 476.11 to determine the terms and procedures under which toll communications is interchanged. Since one of the terms of interconnection is the rate charged for certain services, such as access services, the Board has the authority to regulate those rates.[3] Thus, the Respondents are

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[3] See Northwestern Bell Tel. Co. v. Hawkeye State Tel. Co., 165 N.W.2d 771, 775 (Iowa 1969), holding that the Board's authority over "terms and procedures" pursuant to § 490A.11 includes financial matters. Section 490A.11 was re-numbered as § 476.11 in 1976.

public utilities "subject to rate regulation" because the Board has the authority to regulate their access service rates. As such, the Respondents are required to comply with the terms and conditions of their tariffs as set forth in Iowa Code § 476.5.

Moreover, pursuant to Iowa Code § 476.3(1), the Board has the statutory authority to review a public utility's activities, interpret the language of the tariff, and apply that language to the facts to determine whether the utility has complied with the terms and conditions of its tariff. Specifically, the last sentence of that section provides:

> When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.[4]

Accordingly, the Board finds that the Respondents are public utilities subject to rate regulation, pursuant to § 476.11, and as such are required to comply with the terms and conditions of their tariffs, pursuant to § 476.5. The Board also finds that it

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[4] The original language of this section said that the Board "shall determine just, reasonable ... regulations to be *thereafter* observed and enforced." (Emphasis added.) The courts interpreted this language to mean that the agency could grant prospective relief only, that is, the Board could not order refunds. Oliver v. Iowa Power and Light Co., 183 N.W.2d 687 (Iowa 1971). The result was that a customer who was aggrieved by a public utility's unreasonable tariff interpretation could come to the Board (then named the Iowa State Commerce Commission) for future relief, but had to maintain a separate action in a court in order to seek refunds or other reparations.

In 1981, the statute was amended to remove the word "thereafter" from the last sentence, as well as to make some other grammatical changes. 1981 Iowa Acts ch. 156, § 5. The courts found this to be a substantive change, Mid-Iowa Community Action v. Iowa State Commerce Comm'n, 421 N.W.2d 899 (Iowa 1988) and concluded that the agency now has the authority to investigate complaints regarding the reasonableness of a utility's regulated activities and, in appropriate cases, order refunds.

has the jurisdiction and authority to assess the Respondents' interconnections with the IXCs, pursuant to § 476.11, interpret their tariffs, apply the terms of their tariffs to the facts in this case, as found by the Board after notice and hearing, and to order refunds, if appropriate, pursuant to § 476.3, and act to ensure fair competition in the public interest, pursuant to 199 IAC 22.1(1).

STATEMENT REGARDING CONFIDENTIAL RECORDS

The parties to this case entered into protective agreements as a part of the discovery process. Pursuant to these agreements, the Board has received a substantial amount of the evidence as confidential filings, pursuant to Board rule 199 IAC 1.9. The Board has considered all of the evidence in the record in reaching its decision, but in recognition of the parties' protective agreements, this order will not reveal the specifics of any evidence submitted as confidential. Nonetheless, the Board relies on that evidence as part of the basis for this decision and the confidential exhibits and testimony will be referred to and characterized as necessary.

The Board has issued a number of orders in this matter granting confidential treatment to various documents and the information contained therein. These orders are based entirely on the protective agreements and the representations of the party who asserts the information is confidential. The parties are reminded that pursuant to 199 IAC 1.9, if any person should request to inspect any of that information, the Board will give notice to the interested parties and withhold the information from

public inspection for 14 days to allow the party who claims confidentiality to seek injunctive relief. In any such proceeding, the burden will be on the party claiming confidentiality to prove that the information is exempt from public disclosure pursuant to Iowa Code § 22.7. Otherwise, the information will be made available to the public pursuant to § 22.2.

ISSUES

This case is best divided into three separate categories for consideration. The first category consists of the alleged tariff violations, the central issue of which is whether the FCSCs are considered end users under the terms of the Respondents' applicable tariffs. This tariff category focuses primarily on the past actions of the parties.

The second category pertains to public interest issues where the IXCs ask the Board to put measures into place that will deter or halt the access pumping schemes that are at issue in this complaint. These issues primarily address prospective matters.

The third category pertains to the counterclaims raised by Reasnor against QCC and Sprint.

This order will address each category individually and will analyze the relevant sub-issues associated with each issue in the appropriate section.

TARIFF ISSUES

I. Whether the Respondents Violated the Terms of Their Access Tariffs When They Charged Terminating Switched Access Fees for the Intrastate Toll Traffic at Issue.

The IXCs assert that the Respondents' intrastate access services tariffs do not allow them to charge terminating switched access fees for any of the traffic to the telephone numbers assigned to the FCSCs. (QCC Initial Brief, pp. 16-17). The IXCs and Consumer Advocate request that the Board order the Respondents to refund to the IXCs all of the intrastate charges that were paid and credit the IXCs for all charges that were not paid. (Id. at 107; Sprint Initial Brief, p. 45; AT&T Initial Brief, p. 36; Consumer Advocate Initial Brief, pp. 4-5).

Most of the Respondents concur in the language of the ITA Tariff for switched access service for intrastate traffic, which incorporates many terms from the interstate access tariff filed with the FCC. (QCC Complaint, p. 12). In fact, all of the Respondents' access tariffs have adopted the terms, conditions, and definitions in the NECA interstate access tariff with respect to their intrastate switched access service.[5] Therefore, the Board will review the language used for interstate purposes in conjunction with the Respondents' intrastate tariffs and will consequently make

[5] See Exhibit 3, ITA Tariff No. 1, Section 1.1 ("The regulations, rates and charges applicable to the provision of the Carrier Common Line, Switched Access and Special Access Services, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by the Local Exchange Utility, herein after referred to as the Company, to Intrastate Customers, hereinafter referred to as IC's, are the same as those filed in the Exchange Carrier Association Tariff F.C.C. No. 5 with the exceptions listed herein"). (Emphasis added.) No relevant exceptions are listed.

reference to the NECA tariff. The Board's analysis, however, is limited to the intrastate application of that language.

The NECA interstate access tariff outlines the provision of switched access service by the LEC to an end user as follows:

> 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.**

(Exhibit 35, Section 6.1, emphasis added).

This provision identifies three requirements relevant to this proceeding that must be met in order for intrastate access charges to be applied to toll traffic:

1. Calls must be delivered to an end user of the LEC's local exchange tariffs;
2. Calls must terminate at the end user's premises; and
3. Calls must terminate in the LEC's certificated local exchange area.

The Board emphasizes, and it is not disputed, that all three of these requirements must be met before a local exchange carrier can assess switched access charges to intrastate toll traffic directed to a particular telephone number.