rates. The FCSC conferencing bridges, however, remained in the exchange of the original LEC. (Confidential Exhibit 1275). QCC labels this practice traffic laundering.

Although the Board already determined that the FCSCs were not end-users, for purposes of this discussion, the Board will assume they were. Under that assumption, the issue of traffic laundering hinges upon whether the call was received in the exchange of the LEC that is billing for terminating access service. The switched access tariffs require the following:

> On the terminating end of an interstate or foreign call, usage is measured from the time the call is received by the end user in the terminating exchange.

(Exhibit 523 (NECA Tariff No. 5, § 2.6), emphasis added).

QCC's basic position is that if, for example, toll calls are received in an exchange of LEC A, then the access rates for LEC A must be applied to those toll calls. QCC contends that in this case, toll calls were received in an exchange served by LEC A, but the access rates for LEC B were applied to those toll calls, even though LEC B did not have authority to serve that exchange. The record shows that in at least one case, the result was that IXCs were billed far higher access charges than if the access rates of LEC A had been applied to toll calls that were actually received in LEC A's exchange. (Confidential Exhibit 1, pp. 123-24). In other situations, the laundering of the toll traffic would allow an ILEC to bypass the access sharing requirements of the NECA pool for an additional two years by transitioning access billing to an affiliated LEC. (Id. at 173-74).

also states, and QCC agrees, that Superior's telephone numbers were used but calls were completed through Great Lakes' switch. (Tr. 557).

Reasnor also disputes the laundering charge, stating the arrangement was FX service and that its local exchange tariff does not impose separate charges for FX service. (Reasnor Reply Brief, p. 17).

**Analysis**

QCC explained that most of the Respondents in this case are or were members of the NECA traffic sensitive pool for purposes of interstate access charges. The NECA pool generally ensures that a LEC will receive a minimum amount of access revenues, but excess access revenues must be shared with other LECs that are also members of the pool. (Confidential Exhibit 1, pp. 49-51). Carriers are allowed to opt-out of the NECA pool for a maximum period of two years and during this time, the carriers may keep all of their access revenues. (Tr. 973; Confidential Exhibit 1). After two years, carriers that have opted-out of the NECA pool must re-enter the pool or be able show cost support for their rates. (Id.). Without support for the existing rates, the access rates would be reduced to a level that can be supported; in the case of one of the Respondents, that level may be as low as approximately $0.0025 per minute. (Confidential Exhibit 1, p. 174).

QCC argues that in an effort to prevent their access rates from being reduced to such levels, the Respondents transferred the access billings to another LEC that would then opt out of the NECA pool for the next two-year period and bill at higher

QCC provided convincing testimony that the traffic routing was concealed from the IXCs because telephone numbers of LEC B were assigned to traffic routed to the exchange of LEC A. (Tr. 974). QCC testified that IXCs would look at the telephone number and the local exchange routing guide and would assume a toll call was being delivered to a particular exchange. Not until QCC conducted discovery in this case did it learn that the calls were not being routed as indicated by the telephone numbers. QCC testified, and the Board agrees, that most of the LECs charged with laundering traffic were attempting to hide the true routing of traffic from QCC and other IXCs. (Tr. 830-31).

Superior's claims that it was providing FX service to FCSCs as a response to QCC's traffic laundering allegations are not persuasive. The confidential record in this case provides detailed insight into the business relationships between Superior, the FCSCs, a broker, and Great Lakes. (Confidential Exhibit 1, pp. 1275-1278). In analyzing the business relationships between these four entities, the Board concludes there was no reason why an FCSC would have requested FX service from Superior and no credible evidence that it did. Additionally, Superior's witnesses at the hearing admitted that there were no facilities between Superior and Great Lakes. (Tr. 2611-12, 2723-24). This lack of facilities defeats the FX claim. Overall, Superior's FX claim appears to be an after-the-fact attempt to apply the terms and conditions of its local exchange tariff to the FCSCs in order to deflect the traffic laundering charges brought by QCC.

Similarly, the confidential record in this case provides insight into the relationships between Reasnor, an FCSC, and Sully. (Confidential Exhibit 1, pp. 58-60, 215-23). In analyzing the relationships between these three entities, the Board sees no reason why the FCSC would have requested FX service from Reasnor and no credible evidence that it did. (Confidential Exhibit 1, pp. 215-23; Exhibit 1275, p. 70; Exhibit 49, p. 20). Additionally, at the outset of this proceeding, the owner of Reasnor stated in an affidavit that the conference bridges for the FCSC were located in the Reasnor exchange, not the Sully exchange. (QCC Initial Brief, p. 57; Affidavit of Gary Neil; Exhibit A to Reasnor's Motion for Summary Judgment, filed March 12, 2007). After the statements in the affidavit proved to be untrue, Reasnor argued that there was FX service between Reasnor and Sully. Reasnor's FX claim was fabricated after-the-fact in order to deflect the traffic laundering charges brought by QCC.

The Board notes that most of the specific details pertaining to QCC's traffic laundering charges in this case are protected by the confidentiality agreement among the parties. Nevertheless, the Board has fully considered both the confidential and public record relating to this issue and finds that any intrastate toll calls that did not terminate in Farmers-Riceville's, Superior's, or Reasnor's certificated local exchange areas, but were assessed these companies' intrastate access rates, failed to meet the tariff requirements for billing intrastate switched access because they were not terminated in the exchange for which terminating access was billed.

### c. Whether Great Lakes' and Superior's Traffic Terminated Within their Certificated Local Exchange Areas.

**IXCs' Position**

QCC asserts that Great Lakes is certificated by the Board, pursuant to Iowa Code § 476.29, to provide telecommunications service only in the Lake Park and Milford, Iowa, exchanges and that Great Lakes' local exchange tariff identifies only Lake Park and Milford as exchanges where Great Lakes provides service. (QCC Initial Brief, p. 58; Tr. 2624-26; Exhibits 723, 1384-85). QCC claims, however, that Great Lakes provides all of its services for FCSCs in Spencer, Iowa, despite not being certificated to provide service in that exchange. (Id.; Tr. 2410-11, 2417, 2419-20, 2461-62). QCC argues that since Great Lakes is not certificated in the Spencer exchange, none of the FCSCs associated with Great Lakes and located in Spencer could be end users of Great Lakes' local exchange service, as required by the terms of the tariff. (QCC Initial Brief, p. 60).

QCC also states that Superior is not certified to provide service in the Spencer, Iowa, exchange, but rather is only authorized to provide service in the Superior exchange. (Id. at 61). All of Superior's FCSC traffic was terminated in Spencer. QCC asserts that Superior's lack of certification in the Spencer exchange means that Superior cannot provide service to end users in Spencer. (Id.).

**Respondents' Position**

Great Lakes responds by stating that the issue of its certification in the Spencer exchange was not included in QCC's complaint and the Board therefore should not make its determination regarding Great Lakes' assessment of access charges based on the certification issue. (Great Lakes/Superior Reply Brief, p. 13). Great Lakes argues that it should be considered certificated in all of Qwest Corporation's exchanges in Iowa since that is what it proposed in its original application for a certificate of public convenience and necessity and because it adhered to the Board's certification process in good faith. (Id. at 13-16). Great Lakes also argues that it was never informed by the Board that its certificate or tariff were defective. (Id. at 15).

Superior responds to QCC's allegations by restating its earlier argument that it served its FCSC customers, located in Spencer, by its tariffed FX service. (Exhibit 1389).

**Analysis**

Great Lakes suggested that the issue of its certification in the Spencer exchange was not included in QCC's complaint and therefore, the Board should not consider the certification issue when determining whether Great Lakes appropriately assessed intrastate access charges. (Great Lakes/Superior Reply Brief, p. 13). The Board already considered this argument following a motion to exclude evidence filed by Great Lakes and Superior on November 12, 2008. In that motion, Great Lakes and Superior asserted that the scope of their certificates is irrelevant and excludable evidence pursuant to Iowa Rule of Evidence 5.402. The Board issued an order on November 26, 2008, denying Great Lakes and Superior's motion stating that the evidence regarding the certificates was relevant to put QCC's claims into an appropriate context. Because the Board has already ruled that evidence regarding Great Lakes and Superior's certificates is relevant, the Board will not revisit the issue now.

Great Lakes' certificate of public convenience and necessity clearly states that Great Lakes is authorized to provide service in the exchanges identified in its tariffs. (Exhibit 1385). Great Lakes' local exchange tariff states that it provides service in the Lake Park and Milford exchanges. (Tr. 2461). Great Lakes testified that it sought an amendment to its certificate by the Board to allow Great Lakes to provide service in the Spencer exchange, but a review of the certificate indicates that an amendment was not what was required. Instead, Great Lakes needed to amend its tariff. The evidence in the record demonstrates that Great Lakes did not amend its tariff to include the provision of service in the Spencer exchange and, therefore, Great Lakes is not authorized to provide service in the Spencer exchange.

Pursuant to Iowa Code § 17A.14(4), the Board will take official notice of the North American Numbering Plan Administrator (NANPA) records, which show that Great Lakes was assigned telephone numbers only for the Lake Park and Milford exchanges.[21] Based on these records, Great Lakes appears to have been using its Lake Park and Milford telephone numbers to terminate conferencing traffic in the Spencer exchange, where it was not approved to provide service. The fact that

[21] The Board finds that these records are simple statements of fact, which are not subject to dispute. Therefore, fairness to the parties does not require an opportunity to contest the facts.

Great Lakes was not using Spencer, Iowa, phone numbers to terminate calls in the Spencer exchange supports the conclusion that Great Lakes is not certificated in the Spencer, Iowa, exchange and that it improperly assessed terminating access charges for intrastate toll traffic terminating in the Spencer exchange.

With respect to Superior, both Superior's tariff and its Articles of Incorporation authorize it to provide service only in the Superior exchange. (Exhibit 1387; Tr. 2605-06). The record reflects that Superior was terminating Superior's FCSC traffic in the Spencer exchange, where Superior is not certificated. Even though Superior's local exchange tariff contains a FX offering, the service between the Superior exchange and the Spencer exchange was not FX service since none of the FCSCs obtained local exchange service, a prerequisite for FX service, pursuant to the terms and conditions of the tariff. Therefore, the record supports the conclusion that Superior assessed intrastate switched access charges for FCSC traffic in an exchange where it does not have a certificate.

**B. Conclusions Regarding Tariff Issues**

For the reasons discussed above, the Board finds that none of the FCSCs associated with the Respondents were end users for purposes of the Respondents' intrastate exchange access tariffs, none of the intrastate toll traffic associated with the FCSCs terminated at an end user's premises, and much of the intrastate toll traffic associated with the FCSCs did not terminate in the Respondents' certificated local exchange area. For each of these reasons, intrastate access charges did not apply to calls to the FCSCs and should not have been billed to the IXCs for calls to numbers assigned to the FCSCs.

Pursuant to the Board's authority set forth in Iowa Code § 476.3, the Board directs the Respondents to refund the improperly collected intrastate access charges to QCC and the IXC intervenors in this proceeding, AT&T and Sprint. Because the precise amount of the refunds is not clear in this record, the Board asks QCC, AT&T, and Sprint to file their calculations of the amount of improper intrastate access charges they were billed by, and the amounts they paid to, the Respondents within 30 days of the date of this order. QCC, AT&T, and Sprint are authorized to conduct additional discovery from the Respondents if necessary to make those calculations.

## PUBLIC INTEREST ISSUES

### I. Whether the Sharing of Access Revenues Between the Respondents and the FCSCs is an Unreasonable and Discriminatory Practice.

**IXCs' Positions**

QCC asserts that the sharing of access revenues by a LEC with its alleged customers is abusive and constitutes an unjust and unreasonable practice under Iowa Code § 476.3. (QCC Initial Brief, p. 77). QCC claims that the FCSCs guaranteed a certain volume of traffic to the Respondents, some exceeding one million minutes of traffic per month. (Id.). QCC states that the FCSCs met and exceeded those promises and that all of the Respondents shared terminating access revenues with the FCSCs. (Id.). QCC argues that intrastate access service rates are intended to cover the LEC's cost of providing intrastate access services and that if a LEC is able to share its access revenues with a FCSC, then those access rates cannot be cost-based and must be unjust and unreasonable. (Id. at 77-79).

QCC also argues that the access stimulation that occurred in this case promotes two forms of discrimination, in violation of Iowa Code § 476.5. (Id. at 99-100). First, QCC claims that if the Respondents are correct that the FCSCs are considered local exchange customers, then the access sharing arrangements discriminate against other local exchange customers who do not receive similar access sharing payments. (Id. at 99-101). Second, QCC argues that FCSCs that share access revenues receive their telephone service without charge while other local exchange customers must pay for their service. (Id.).

Sprint asserts that the LECs' provision of intrastate access services is a monopoly because the IXCs, as purchasers of those services, have no real choice but to pay the LEC provider to terminate their calls. (Tr. 1753-54). Sprint argues that access services in general are priced higher than the actual cost of providing the service, but the access subsidies were not intended to fund the types of services provided by the FCSCs in this case. (Id.).

Similarly, AT&T argues that the higher access rates charged by rural carriers are meant to subsidize high cost rural access to the public switched network; the rates were never intended to allow LECs to shift the costs of conferencing services onto IXCs. (Tr. 1659). AT&T argues that the Respondents and their FCSC partners are exploiting the access regime and asks the Board to expressly condition the granting of certificates of public convenience and necessity, issued pursuant to Iowa Code § 476.29(2), to LECs that do not participate in traffic stimulation. (Id.). AT&T also asks the Board to permit IXCs to withhold payments of intrastate access charges when the volume of traffic to a particular LEC increases suddenly. (Id.).

Consumer Advocate asserts that the Respondents have abused the switched access system, which was created for the express purpose of helping to pay the higher costs per customer incurred by LECs that serve low density service areas, in order to promote the universal availability of telephone service at reasonable retail rates. (Consumer Advocate Initial Brief, pp. 4-5).

**Respondents' Positions**

The Respondents contend that determining the level of access rates is not the subject of this proceeding and that there is no legal support for the proposition that receipt of an enhanced rate of return on access charges is an unjust and unreasonable practice. (ILEC Group Reply Brief, pp. 47-48). The Respondents claim that the Board can only look at the level of access rates in a rate proceeding. (Id.).

With respect to the allegations of unlawful discrimination, the Respondents generally argue that QCC failed to prove that the Respondents discriminated against other local service customers when they shared access revenues on a preferential basis with the conferencing customers. (Id. at 66-68). The Respondents claim that the FCSCs were not similarly situated to any other local service customer (i.e., there were no other customers who performed marketing services for them in a similar manner), and therefore there was no discrimination. (Id. at 66-68; Aventure Initial Brief, pp. 12-13).

**Analysis**

Considering the complete record in this case, the Board will not make a finding that revenue sharing arrangements are inherently unreasonable. This record is focused on FCSCs and access stimulation schemes and lacks information about whether there are other revenue-sharing arrangements that may be reasonable or what the distinguishing characteristics of those services might be. In the absence of a multi-service investigation, a broad finding of unreasonableness would be inappropriate and could have unintended consequences.

The sharing of access revenues may often be an indication that a particular service arrangement is unreasonable. If access rates are set at a level intended to recover the costs of providing access services, then a carrier's willingness to share a substantial portion of its access revenue with a FCSC is evidence that the carrier's rates are too high for the volume of traffic being terminated.

In fact, it is the level of intrastate access rates, in part, that makes the access sharing possible and profitable for the Respondents in this case.[22] The evidence

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[22] The Respondents' interstate access rates were also a factor, and perhaps even the more important factor given the percentage of FCSC traffic that is interstate. However, that part of this transaction is outside the Board's jurisdiction.

shows that some Respondents' access rates were as high as \$0.136 per minute for terminating toll calls. AT&T and the other IXCs argue that these higher access rates were intended, in part, to subsidize high cost rural access to the public switched network. The IXCs argue that such subsidies should be limited to reasonable levels, if they are allowed at all. When FCSCs get involved, however, the numbers can change very quickly. For example, one Respondent (which billed more than \$0.13 per minute for access) billed QCC for an average of less than 600,000 access minutes per year prior to its involvement with FCSCs. In the year FCSC services were initiated, the Respondent billed QCC for nearly 60 million access minutes, a 100-fold increase in toll traffic.[23] To the extent that per-minute rates at this level included an implicit subsidy, then this rapid 100-fold increase in access minutes produced an unreasonable result because it caused a similar increase in the subsidy without a matching increase in costs.

The Board emphasizes that it is not making a determination in this case regarding the use or provision of access charges in general. The Board's concern is that in circumstances like those presented in this case where (1) a carrier's access rates are set with reference to a relatively low historical volume of access services, (2) the current and future volume of those services is considerably greater, (3) the incremental cost of increased traffic is less than the charge per minute, (4) the carrier is willing to share a substantial portion of its access revenues, and (5) the carrier has

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[23] Additional detailed evidence on this issue is available in the confidential portion of the record at Confidential Tr. 160; Confidential Exhibit 1, p. 123.

substantial market power, even monopoly power, over those services, then the result is an unreasonable rate or service arrangement, in the absence of any other factors.

The Board also emphasizes that its finding that the Respondents' actions produced an unreasonable result regarding the assessment of access charges is not a basis for the Board's directive that the Respondents provide refunds or other retrospective relief to the IXCs. Rather, the Board's finding that these actions culminated in an unreasonable outcome is only a basis for addressing this situation on a prospective basis.

In an effort to curb this unreasonable result going forward, the Board is initiating a rule making to consider amendments to the Board's rules regarding high volume access services. This rule making will be independent of any other rule making associated with access charges; it will solely address high volume access services and will propose methods to prevent these unreasonable results in similar situations.

## II. Whether the Board Should Restrict Conferencing Services that Promote Pornographic Content on Lines that Cannot be Blocked.

### IXCs' Positions

QCC states that the traffic stimulation demonstrated in this case violates the public interest because it fails to protect children from communications involving pornographic content. (Tr. 1304-06). QCC argues that a significant portion of the traffic at issue in this case involved free "adult content" or pornographic calling and that parents do not have the ability to block these types of calls or to restrict their

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children from accessing these services because they are accessed just like a toll call, without the traditional blocking methods associated with 900 prefixes, for example. (Id.).

QCC claims that 47 U.S.C. § 223(c)"1" pertains to indecent content conferencing provided over toll-free lines. (QCC Initial Brief, pp. 90-91) QCC states that this statute and the FCC's decisions promulgated pursuant to the statute are intended to protect minors from indecent communications. (Id.). QCC provides the following quote from the FCC to support its position:

> We conclude that our regulations represent a narrowly tailored method of achieving a compelling government interest, namely, protecting children from indecent material. The regulations are designed to make indecent communications available to adults who affirmatively request the service, but unavailable to minors ... . Without the additional restrictions on access put in place by dial-a-porn providers (scrambling, access codes, credit cards), children will still be able to gain access to indecent communications.

In re: Regulations Concerning Indecent Communications by Telephone, 5 FCC Rcd. 4926, FCC 90-230, ¶ 16 (released June 29, 1990), aff'd, Information Providers Coalition for Defense of the First Amendment vs. FCC, 928 F.2d 866, 874-76 (9th Cir. 1991).

**Respondents' Positions**

Some of the Respondents contend that QCC's focus on the content of the calls is a diversionary tactic designed to create an emotional reaction and prejudice the Board's view of the case. (ILEC Group Initial Brief, pp. 40-41). Generally, the

Respondents assert that 47 U.S.C. § 223(c)"1" does not apply in this case, arguing that the statute only applies to pay-per-call services or 1-900 calls. (ILEC Group Initial Brief, pp. 42-43). Several of the Respondents claim that they were unaware of the content of the calls. (Tr. 1995, 2131). Other Respondents argue that there is not an Iowa statute that prohibits the transmission of indecent content over toll-free calls, such as the calls at issue in this case. (Great Lakes/Superior Initial Brief, p. 41).

**Analysis**

In their briefs, QCC and the Respondents argue over whether 47 U.S.C. § 223(c)"1" pertains to indecent content conferencing over toll-free lines. While QCC asserts that the federal statute applies, it does not present evidence that the statute has been applied to restrict pornographic conferencing over toll-free lines. Moreover, it is a federal statute, the enforcement of which is not for the Board. Clear violations of the statute might be relevant to the Board's consideration of the reasonableness of the service, but that situation is not presented in this case.

The evidence in this case shows that several Respondents partnered with FCSCs that provided free calling services for indecent or pornographic content. (Tr. 1054). The record also shows that by using these free calling services, there were no technological measures in place to protect minors from making calls to access these pornographic services, such as a 1-900 number, which enables parents to place a block on the call. (Tr. 1054-55). The Board finds that the lack of any mechanism for parents to regulate their minor children's access to pornographic or indecent services over the telephone is contrary to the public interest.

The Board should not, and will not, attempt to regulate the content of telephone calls. However, the agency has the authority to protect and promote the ability of parents to control access to obscene calling services in Iowa by their children, in order to promote the public interest. Therefore, the Board will initiate a rule making, independent of the rule making for high volume access services discussed previously, to consider amendments to the Board's rules that are modeled after 47 U.S.C. § 223 and to restrict access to obscene calling services in Iowa.

## III. Whether the Board Should Address Aventure's Federal Universal Service Fund Support.

### IXCs' Positions

QCC claims that the evidence in this case demonstrates that Aventure defrauded the federal USF by 1) seeking payments due exclusively to interactions with FCSCs; 2) inflating the number of lines it serves; and 3) inflating the number of exchanges it serves. (QCC Initial Brief, pp. 88-89). QCC states that Aventure's designation as an eligible telecommunications carrier (ETC) authorizes Aventure to seek payments from the USF and that the Board has jurisdiction over Aventure's use of USF money because the Board determines Aventure's designation as an ETC, pursuant to delegated authority. (Id.). QCC and AT&T ask the Board to revoke Aventure's ETC designation because of the alleged abuses of the high cost USF support. (Id.; AT&T Initial Brief, pp. 36-41).

**Respondents' Positions**

Aventure states that the IXCs did not raise the USF issue against Aventure in their formal complaint and therefore, they must initiate another complaint before the Board or FCC to properly address this issue. (Aventure Brief, p. 4). Nevertheless, Aventure states that the instructions on the FCC's line count form (Form 525) indicate that the FCC does not distinguish among different types of line uses.[24] (Aventure Reply Brief, pp. 4-5). Aventure states that such lines include all business class lines that are assessed the end user common line charge and therefore, Aventure contends, its practice of reporting lines provided for conference calling service is authorized by the FCC. (Id.).

**Analysis**

QCC submitted evidence into the record that indicates Aventure received the majority of its USF support for conferencing services, that the line counts Aventure submitted may have included a substantial number of test lines, and that Aventure may have overstated the actual number of exchanges it served. FCC Form 525, referenced by Aventure, appears to take count of bona fide customer lines. Based on the Board's ruling in this order that the FCSCs were not end users, Aventure's line counts to the FCC on this form may be in error.

In addition, Aventure stated at the hearing in this proceeding that it reported approximately 3,000 lines to the FCC for line count purposes. (Tr. 2331, 2339).

[24] Aventure states that in columns 30 and 31 of Form 525, the ETC must report the number of lines for residential and single line business and the number of multi-line business lines.

However, most of these lines were for FCSC traffic and in fact, from late 2005 through 2007, Aventure served only FCSCs. (Tr. 2250). Aventure obtained its first traditional customers in January 2008 and currently serves 140 traditional customers.

It appears, based on the record, that Aventure is alone among the Respondents in reporting conference calling lines for USF purposes. However, the administration of the federal USF is not this Board's responsibility or within its jurisdiction. Therefore, the Board will report this information to the FCC for further action as the FCC deems appropriate. Because the Board is not making a final determination regarding Aventure's status as an eligible telecommunications carrier for purposes of receiving federal USF, Aventure's argument that the issue was untimely raised by the IXCs is moot.

## IV. Whether the Board Should Address the Use of Telephone Numbering Resources for FCSCs.

### IXCs' Positions

QCC asserts that the Respondents have abused numbering resources by not assigning numbers according to FCC requirements. (QCC Reply Brief, pp. 39-41). Specifically, QCC states that thousands of phone numbers have been assigned to FCSCs that are not end users. QCC asks the Board to use its authority to reclaim telephone numbers assigned to FCSCs. (Id.). Specifically, QCC cites to 47 C.F.R. § 52.15(i)"5," which states:

> The NANPA and the Pooling Administrator shall abide by the state commission's determination to reclaim numbering resources if the state commission is satisfied

> that the service provider has not activated and commenced assignment to end users of their numbering resources within six months of receipt.

(Id.).

Similarly, Sprint asserts that the Board has authority over the assignment of numbering resources and can remedy the invalid use of numbers. (Sprint Initial Brief, pp. 40-41). Sprint argues that to the extent some Respondents are providing services in violation of their certificates, the Board should report the information to NANPA or the FCC or should initiate a proceeding to reclaim those numbering resources. (Id.).

**Respondents' Positions**

Great Lakes and Superior argue that the assignment and use of telephone numbers is not within the Board's authority and any finding on these matters would be an unlawful action. (Great Lakes/Superior Reply Brief, pp. 31-32).

Most of the Respondents argue that the Board has limited authority over telephone numbering resources, stating that most of that authority lies with the FCC, yet some of the Respondents agree the Board has delegated authority to reclaim telephone numbers. (ILEC Group Initial Brief, pp. 54-56).

**Analysis**

With respect to the Board's authority and jurisdiction over telephone numbering administration, 47 U.S.C. § 251(e) provides:

> The Commission shall create or designate one or more impartial entities to administer telecommunications

> numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from designating to State commissions or other entities all or any portion of such jurisdiction.

The NANPA and the Pooling Administrator are the impartial entities designated by the FCC to administer telephone numbering, including the assignment of telephone numbers. State commissions have also been given a role in numbering administration, including reclamation. Specifically, 47 C.F.R. § 52.15(i) grants state commissions the authority to reclaim telephone numbers.

When the NANPA or the Pooling Administrator assigns blocks of telephone numbers, the service provider is required to begin assigning those telephone numbers to end users within six months. Service providers confirm to NANPA or the Pooling Administrator that blocks of telephone numbers have been activated and are being assigned to end users. If a state commission is satisfied that this is not the case, then the state commission can direct the NANPA or Pooling Administrator to reclaim any blocks of numbers that do not satisfy that criteria.

The Board determined earlier in this order that the FCSCs associated with the Respondents are not end users because they did not subscribe to the terms and conditions of the Respondents' tariffs. For Great Lakes in particular, the record in this proceeding indicates that since receiving a certificate in 2005, it has served only FCSCs. (Tr. 2423). Because FCSCs are not end users, Great Lakes should not have numbers activated for pure FCSC use. Therefore, the Board will direct the NANPA and Pooling Administrator to commence reclamation of Great Lakes' numbering resources.

The remaining seven Respondents are directed to file reports with the Board within ten days of this order demonstrating whether they have any numbering blocks with no end users assigned and how many non-FCSC end users currently have numbers out of each block.

Because the evidence in this record shows that Great Lakes and Aventure have few, if any, customers and that Great Lakes has provided service in an exchange that is not covered by its certificates, the Board will initiate a subsequent proceeding asking Great Lakes and Aventure to show cause why their certificates, issued pursuant to Iowa Code § 476.29, should not be revoked.

**V. Whether the Board Should Make a Declaratory Finding Regarding the Rural Exemptions Claimed by Aventure and Great Lakes.**

**IXCs' Positions**

QCC asks the Board to make a declaratory finding pertaining to the rural exemptions claimed by Great Lakes and Aventure. (QCC Initial Brief, p. 82). QCC states that CLECs are permitted to claim a rural exemption under federal law and may charge higher interstate access rates than the ILEC serving the same exchange if the CLEC meets two conditions: 1) it must compete for customers with the ILEC, and 2) one hundred percent of the CLEC's customers must be located in a rural exchange. (Id.). QCC states that Great Lakes has no outside plant and serves only

FCSCs, therefore, it does not compete with QCC. (Id. at 82-83). QCC also argues that Aventure's true central office is in Sioux City, Iowa, which is a non-rural exchange and therefore does not qualify for a rural exemption. (Id. at 84).

**Respondents' Positions**

Both Great Lakes and Aventure argue that they comply with their rural exemptions, which allows them to charge higher access rates than QCC and that the Board does not have jurisdiction to resolve the issue because it involves federal telecommunications policy. (Aventure Initial Brief, pp. 2-3; Great Lakes/Superior Initial Brief, pp. 38-40).

**Analysis**

Pursuant to 47 C.F.R. § 61.26, a rural CLEC must meet specific requirements when serving in an exchange of a non-rural ILEC in order to charge interstate access rates higher than the ILEC's. Failure to meet these requirements means that the rural CLEC's interstate access rates must mirror the interstate access rates of the ILEC.

QCC admits that the rural exemption has no bearing on the intrastate access rates that are at issue in this proceeding. (Tr. 832). The Board's jurisdiction over access charges only pertains to intrastate switched access.

Since the rural exemption provisions that QCC refers to relate to interstate access charges and this Board's jurisdiction is limited to intrastate access charges, a finding by the Board on this matter would be inappropriate. The FCC will be informed of this situation by this Order and may take action, if appropriate.

## COUNTERCLAIMS

### I. Whether QCC and Sprint Engaged in Unlawful Self Help by Refusing to Pay Tariffed Charges for Switched Access.

**Reasnor's Position**

Reasnor contends that QCC and Sprint engaged in unlawful self-help by refusing to pay tariffed charges for intrastate switched access. (Reasnor Initial Brief, pp. 39-40). Reasnor argues that a carrier has the right to collect its tariffed charges, even when those charges may be disputed among the parties, and that QCC and Sprint not only withheld disputed charges, but also refused to make payments on undisputed access invoices in violation of the Telecommunications Act of 1976. (Id. at 40-44).[25] Reasnor also claims that QCC participated in call blocking by rerouting calls to other carriers and that Sprint choked traffic by moving FCSC traffic to limited capacity trunks in violation of Iowa Code § 476.20(1).

**IXCs' Response**

QCC responds that it was justified in withholding payments to Reasnor because the traffic in question was not subject to the switched access tariffs. (QCC

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[25] Tr. 2794-95; Reasnor Initial Brief, pp. 40-41, citing *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647, 11659 ¶ 27 (1999); *Business WATS, Inc. v. American Tel. & Telegraph Co.*, 7 FCC Rcd 7942, ¶ 2 (1992); *In re: MCI Telecommunications Corp.*, 62 FCC 2d 703, 705-706 (1976); *In re: Communique Telecommunications, Inc.*, 10 FCC Rcd at 10405 n. 73; *Nat'l Communications Ass'n, Inc. v. AT&T Co.*, No. 93 Civ. 3707 (LAP), 201 U.S. Dist. LEXIS 951, 15-16 (W.D.N.Y. Feb 5, 2001).

Initial Brief, pp. 103-104). QCC and Sprint argue that withholding payment of disputed access charges is permitted under the tariff dispute resolution provisions. (Id. at 105; Sprint Initial Brief, p. 34; Tr. 1715). QCC contends that it did not engage in call blocking, but rather terminated a least-cost routing provision whereby QCC carried the traffic to various communities for other carriers. (QCC Reply Brief, pp. 50-51).

**Analysis**

There are two forms of self-help at issue here: the first is QCC's and Sprint's actions in withholding payment of disputed access charges and the second is QCC's and Sprint's alleged call blocking.

With respect to the first form of self-help, the Board finds that unilaterally withholding payment is not a preferred form of dispute resolution in economic disputes between carriers unless it is clearly contemplated under the applicable dispute resolution provisions, which it was not in this case. However, based on the rulings the Board has made regarding the tariff compliance issues, specifically that terminating intrastate access charges were improperly assessed to the IXCs in this case, no money within the Board's jurisdiction is owed by QCC or Sprint to Reasnor or to any other Respondent and there is no need for any remedy in this case.

With respect to the allegations of call blocking, the Board finds that there is not credible evidence in the record to support a finding that QCC engaged in call blocking. The record indicates that QCC was acting as a least cost router for a