

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Electronic Tariff Filing System (ETFS)) WC Docket No. 10-141

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (Qwest) hereby submits these reply comments in the above-captioned docket.¹

In this proceeding, the Federal Communications Commission (Commission) proposes to extend the Commission's electronic filing requirements to all entities that file tariffs, including non-dominant carriers, primarily competitive local exchange carriers (CLECs), that currently do not file their tariffs electronically. All parties in the initial round of comments support the Commission's proposal,² as does Qwest.

I. THE COMMISSION HAS LONG RECOGNIZED THE NEED TO FACILITATE PUBLIC ACCESS TO TARIFF FILINGS.

Some basic history may be useful in evaluating the Commission's proposal. Over the years, the Commission has required tariff-filing carriers to use more technologically advanced means for filing tariffs, ultimately mandating in 1998 that dominant carriers upload their tariff

¹ *In the Matter of Electronic Tariff Filing System (ETFS)*, Notice of Proposed Rulemaking, WC Docket No. 10-141, FCC 10-127, rel. July 15, 2010.

² See Comments of Sprint Nextel Corporation, Comments of Verizon, Comments of AT&T Inc., filed Sept. 10, 2010 in the above-captioned proceeding.

filings electronically via the FCC's Electronic Tariff Filing System (ETFS),³ and in 1999 that price cap LECs also file their petitions for pricing flexibility via ETFS.⁴

Though the Commission has not required non-dominant carriers to file tariffs electronically, it has previously taken steps to make those tariffs more accessible to the public. In 1993, the Commission adopted rules requiring non-dominant carriers to file tariffs on "three and one-half inch floppy diskettes."⁵ At the time, the Commission noted two benefits (among others) that would flow from this approach -- it would "facilitat[e] competition" and "ensure a predictable regulatory environment."⁶ In 1999, the Commission required non-dominant carriers to use CD-ROMs in place of outmoded floppy diskettes; at that point, the Commission referred back to its 1993 action, noting that one of its objectives continued to be "to facilitate the public availability of [non-dominant carrier] tariffs."⁷

II. NON-DOMINANT CARRIERS SHOULD BE REQUIRED TO FILE TARIFFS ELECTRONICALLY.

The Commission's current rules require interested parties to rely on outdated processes to monitor and provide input on tariff filings of non-dominant carriers. To facilitate the tracking of

³ *In the Matter of Electronic Tariff Filing System*, Order, 13 FCC Rcd 12335 (1998) (in July of 1998, Qwest was one of the initial carriers that agreed to assist the then-Competitive Pricing Division with real-time testing of ETFS).

⁴ *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14309 ¶ 171 (1999) (subsequent history omitted).

⁵ *In the Matter of Tariff Filing Requirements for Nondominant Common Carriers*, Memorandum Opinion and Order, 8 FCC Rcd 6752, 6761 ¶ 42 (1993).

⁶ *Id.*

⁷ *In the Matter of 1998 Biennial Regulatory Review – Part 61 of the Commission's Rules, and Related Tariff Requirements; Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 14 FCC Rcd 12293, 12310 ¶ 46 (1999) (citation omitted).

tariff filings of all carriers, the Commission has routinely published since at least the 1980s (as a Public Notice release included with its Daily Digest) a Tariff Transmittal Public Reference Log, which lists recently submitted tariff filings, including filings by non-dominant and dominant carriers. This Reference Log is not an official notice of tariff filings, but it does, in the case of non-dominant carrier filings, provide the only notice that the public receives of tariff filings -- an important factor, as can be seen below, in dealing with tariffs filed on fifteen-days notice under Section 204(a)(3) of the Act. Attached as Exhibit A is a Data Table that lists some illustrative examples of these Public Notices of fifteen-day "deemed lawful" tariff filings of some non-dominant carriers.

Adoption of an electronic tariff filing system for all carriers including non-dominant ones makes sense for a variety of reasons, including the demonstrated effectiveness with which ETFS has been used for 12 years to make dominant carrier tariff filings, monitor for their submission on essentially a real-time basis and file petitions and replies related to those tariff submissions. This long experience with ETFS also demonstrates that the system can be extended to tariff filings by non-dominant carriers in a manner that avoids significant potential burdens on those carriers. And, any such burdens are greatly outweighed by the public interest in making non-dominant tariffs more easily accessible to the public. Indeed, such an electronic system would reduce considerably the drawbacks with the current CD-ROM-based approach that involves multiple physical steps that can occasionally result in those tariffs not being available in a timely manner from either the Commission's reference room facilities or its copy vendor.

ETFS also serves as a tracking tool for all interested parties to easily monitor for the submission of tariff revisions and pricing flexibility petitions by dominant and price cap carriers on what is essentially a real-time basis (simply by accessing ETFS and using the search

mechanism). ETFS also enables parties to file petitions to reject or suspend/investigate such tariff filings electronically and in a timely manner. Another significant benefit to ETFS is that it enables a party wishing to oppose a tariff revision to know with certainty whether or not that tariff revision has actually been filed, and then to easily download and/or print off that tariff revision for expeditious review and analysis (without having to first physically send a company representative to the Commission to obtain a copy).

Thus, the Commission's proposal that non-dominant carriers make their tariff filings electronically provides significant benefits to the filing carriers, including Qwest when it makes filings as a CLEC. No non-dominant carrier has filed comments to the contrary.

III. EXTENSION OF THE ELECTRONIC FILING REQUIREMENT TO NON-DOMINANT CARRIERS WILL ENABLE REASONABLE NOTICE AND COMMENT OPPORTUNITY IN THE CASE OF TARIFFS FILED UNDER SECTION 204(a)(3) OF THE COMMUNICATIONS ACT.

Of perhaps greater significance, electronic filing of all tariffs is essential for the protection of those who purchase service out of the tariffs of non-dominant carriers, specifically interexchange carriers (IXCs) purchasing switched access services from CLECs. While CLECs face competition for end-user customers, they offer a monopoly service from the perspective of connecting IXCs to end users, particularly through the provision of terminating switched access.⁸ Under the current system, some CLECs are filing tariffs that Qwest views as unlawful on fifteen-days notice, but Qwest has not been notified of the filings until after the time for objection has expired. The filing dates, effective dates, Public Notice dates and objection dates of some illustrative fifteen-day tariff filings are set forth in Exhibit A. This inability of IXCs to obtain access to fifteen-day tariff filings in time to file objections before the tariff takes effect enables

⁸ See *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9926-27 ¶ 10, 9934-35 ¶ 28 (2001).

the filing carrier to claim “deemed lawful” status for rates and practices that Qwest believes are patently unlawful -- or at the very least that Qwest should have the opportunity to make a case to the Commission that the rates or practices are unlawful. Because a “deemed lawful” tariff shares many aspects with a “prescribed” tariff, insofar as the carrier is generally insulated from liability if the tariff is adjudicated to be unlawful at a later date, serious legal questions are raised by allowing a fifteen-day tariff to take effect without an opportunity for review and challenge by those customers who could be bound by the tariff’s terms and conditions.

In addition, non-dominant carrier tariff revisions previously filed via CD-ROM occasionally cannot be located at the Commission at all; in some extreme situations, an IXC cannot even determine definitively if a non-dominant carrier has a tariff on file at the Commission. This problem goes beyond fifteen-day tariff filings, and goes to the heart of the tariff process, whereby Qwest and other IXCs find themselves unable to determine the source of rates charged to them by some CLECs -- and to determine whether the rates charged are tariff-based or something else.

To be sure, as is reflected on the attached chart, the Commission has in the past several months provided Public Notices of fifteen-day tariff filings on a more timely basis, enabling Qwest and other interested parties to review and, as appropriate, file timely petitions challenging the lawfulness of particular tariff filings. The Commission is to be commended for taking this important step. But the problem can be solved much more simply through the route proposed in the *NPRM*. If non-dominant carrier tariffs are filed through the ETFS system, the problem of inadequate public access goes away immediately, with reduced burden on the Commission. All customers will be able to monitor tariff filings on a timely basis simply through access to the system.

Qwest offers several additional thoughts on the proposed rules:

- The Commission should initially clarify that non-dominant carriers are required to continue to file their contract tariffs. We note that the Commission's current proposal includes elimination of Sections 61.22(e)(2) and (3) of the Commission's rules as part of the elimination of the rest of the rule that deals with the content of tariff filings. Sections 61.22(e)(2) and (3) deal with non-dominant carrier contract tariff filings. If a non-dominant carrier chooses to tariff its common carrier offerings, then it must comply with the Communications Act with regard to the filing of tariffs and the compliance with the terms of the filed tariffs. This includes the filing of contract tariffs, as the current rules recognize. There is no basis on which to change this requirement. Accordingly, the Commission should include in the final rules language to the effect that non-dominant carriers choosing to provide tariffed services pursuant to contract can only do so consistent with Section 61.55 of the Commission's rules (or a new non-dominant carrier rule created in this proceeding). As currently written, the proposed rules could be read as relieving non-dominant carriers providing service pursuant to tariff from the obligation to file their contract tariffs, a result that is neither related to the purpose of this rulemaking nor consistent with the overall rules governing the tariffing of services by non-dominant carriers.
- Qwest agrees with Verizon that carriers should number their tariff transmittals and special permission requests sequentially from the carrier's last-non-electronic filing.
- Qwest agrees with Sprint that the Commission's proposed 120-day period for non-dominant carriers to bring their tariff filings into compliance with the new rules is reasonable. However, the Commission should give itself sufficient flexibility to deal

with the possibility that a large number of carrier filings seeking fifteen-day “deemed lawful” status under Section 204(a)(3) of the Act will occur within that 120-day period, and must be prepared to examine all fifteen-day tariff filings with the level of scrutiny that they require.

- Qwest also agrees that it is important that the ETFS tariff filing system be the sole repository of carrier tariffs, and that all previously filed tariffs that are not put into the electronic filing system should, as is proposed in the Notice, be declared null and void.

Accordingly, Qwest joins with AT&T, Verizon and Sprint in support of the proposal to extend the Commission’s electronic tariff filing requirements to non-dominant carriers.

Respectfully submitted,

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September 27, 2010

Exhibit A – Reply Comments of Qwest Communications International Inc., WC Docket No. 10-141, *In the Matter of Electronic Tariff Filing System (ETFS)*

Data Table

FCC Public Notices of Non-Dominant Carrier Tariff Filings (on 15 Days' Notice)
(illustrative examples listed from between March and September, 2010)

Date of Public Notice	Date Tariff Filed (Issued Date)	Date Petition to Reject or Suspend and Investigate Due	Date Tariff Scheduled To Be Effective	Carrier
09/08/2010	09/03/2010	09/10/2010	09/19/2010	#Bluegrass Telephone Company, Inc.
08/20/2010	08/17/2010 (date on tariff filing)	08/23/2010	09/01/2010	Tekstar Communications, Inc.
08/18/2010	08/16/2010	08/23/2010	08/31/2010	Telewise, LLC
*07/30/2010	07/22/2010	07/29/2010	08/06/2010	MCIMetro Access Transmission Services Inc.
07/27/2010	07/21/2010	07/28/2010	08/05/2010	Deltacom, Inc.
*07/20/2010	07/08/2010	07/15/2010	07/23/2010	Northern Valley Communications, LLC
*07/12/2010	07/02/2010	07/09/2010	07/17/2010	McLeodUSA Telecommunications Services
*07/12/2010	07/02/2010	07/09/2010	07/17/2010	PAETEC Communications, Inc.
*03/31/2010	03/22/2010	03/29/2010	04/06/2010	Deltacom, Inc.
*03/26/2010	03/17/2010	03/24/2010	04/01/2010	Iowa

Date of Public Notice	Date Tariff Filed (Issued Date)	Date Petition to Reject or Suspend and Investigate Due	Date Tariff Scheduled To Be Effective	Carrier
				Telecommunications Services, Inc.

In the FCC's September 20, 2010 Public Notice (DA 10-1783), it notes that the Bluegrass Telephone Company, Inc. tariff was actually filed on 16 days' notice.

* Denotes tariff filing made on 15 days' notice where the Public Notice was released subsequent to the date Petitions to Reject or Suspend and Investigate were due.

09/27/10

CERTIFICATE OF SERVICE

I, Richard Grozer, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. to be: 1) filed
via ECFS with the Office of the Secretary of the FCC in WC Docket No. 10-141; and 2) served
via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

September 27, 2010