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March 4, 2011

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

RE: *In the Matters of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 and *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135

Dear Ms. Dortch:

On behalf of Qwest Communications Company, LLC, attached is a copy of Qwest's Opposition which Qwest filed today in *All American Telephone Co., Inc., et al., v. AT&T Corp.*, File No. EB-10-MD-003. Qwest is filing its Opposition in the above-referenced proceedings in response to Aventure's February 22, 2011 Petition for Reconsideration or Clarification filed in these proceedings. As such Qwest is submitting its Opposition for inclusion in the record of the above proceedings. Questions or communications regarding this matter may be directed to the undersigned.

Sincerely,

/s/ Robert B. McKenna

Attachment

cc: (via U.S. Mail and electronic mail):
Paul Lundberg, Esq.
Counsel for Aventure Communication Technology, L.L.C.
906 Terra Centre
Sioux City, IA 51101
paull@terracentre.net

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
All American Telephone Co., Inc.,	)	
e-Pinnacle Communications, Inc.	)	
and Chasecom,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EB-10-MD-003
	)	
AT&T Corp.,	)	
	)	
Defendant.	)	

PETITION OF QWEST COMMUNICATIONS COMPANY, LLC TO ACCEPT OPPOSITION FILING

Qwest Communications Company, LLC (Qwest) hereby requests that the Commission accept the attached "Opposition" to a "Petition for Reconsideration or Clarification" filed by All American Telephone Company, Inc., e-Pinnacle Communications, Inc., and Chasecom (All American) and a like Petition filed by Aventure Communication Technology, L.L.C. (Aventure) in the above-captioned docket. Qwest is not a party to this adjudicatory proceeding. Nevertheless, important issues are raised in the Petitions that go beyond the dispute between AT&T and All American and could significantly impact Qwest. Qwest submits that its participation in this proceeding at this time is warranted and is consistent with the public interest and orderly process. In support hereof, Qwest submits the following.

All American seeks reconsideration of the Commission's *Memorandum Opinion and Order*[1] in this docket. The *Order* essentially reaffirmed the basic principle that, because a failure by a customer to pay a tariffed carrier charge does not constitute a violation of the Act, the Commission has no jurisdiction to adjudicate an action by a carrier to collect its unpaid tariffed charges from a customer, whether the customer is a carrier or an end user. This is because the formal complaint sections of the Act grant the Commission jurisdiction to adjudicate complaints that a carrier violated the Act, and not to adjudicate other actions arising out of the Act.[2] The All American Petition challenges this proposition, and asks that the Commission enact a fundamental change in its analysis of jurisdiction over collection actions, now finding that a failure by a carrier to pay a bill for carrier services is itself a violation of the Act (or at least not deciding the issue at all). Such a finding would represent a significant shift from current Commission practice, a shift that would have wide-ranging ramifications beyond the scope of the dispute in which the *Order* arose, including significantly impacting Qwest itself.

Qwest's stake in this proceeding is well illustrated by the companion Petition for Reconsideration or Clarification filed by Aventure.[3] Aventure's Petition focuses almost entirely on a letter that Qwest sent to counsel for Aventure and others advising them of the *Order* and pointing out that the *Order* decisively reaffirmed that non-payment of bills did not constitute a

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[1] *In the Matter of All American Telephone Co., et al., v. AT&T Corp.*, Memorandum Opinion and Order, File No. EB-10-MD-003, FCC 11-5 (rel. Jan. 20, 2011). Petition for Reconsideration or Clarification of All American Telephone Co., Inc., e-Pinnacle Communications, Inc., and Chasecom, filed Feb. 22, 2011.

[2] 47 U.S.C. §§ 206-208.

[3] Petition for Reconsideration or Clarification of Aventure Communication Technology, L.L.C., filed Feb. 22, 2011.

violation of the Act and that collection actions brought under the complaint provisions of the Act were not valid.[4] Aventure proclaims that:

> [B]ecause Qwest has stated its intention to attempt to use the *All American Order* as dispositive precedent in Aventure's pending litigation, it is incumbent upon the Commission to clarify or reconsider its *Order*. Specifically, the Commission should clarify that the *Order* does not invalidate any existing precedent and does not create a new rule of law that has the effect outside of the carrier-specific adjudicatory proceeding in File No. EB-10-MD-003. If, on the contrary, the Commission does intend for the *All American Order* to establish new law and have broad application, Aventure asks that the Commissions reverse the *Order* on reconsideration.[5]

As is indicated by the Aventure Petition, Qwest is a party to a number of lawsuits brought by what are known as "traffic pumping" LECs to collect what they claim are tariffed access charges. In all of these cases, the claim is made that Qwest has an obligation to pay the bills of these carriers as a matter of law (whether the bills are lawful or not) and that failure to do so constitutes a violation of Section 201 of the Act. Qwest's uniform position is that non-payment of a carrier bill is not a violation of the Act, whether the non-paying customer is a carrier or an end user. Grant of the Petitions, as is dramatically illustrated by the Aventure Petition, would significantly and adversely impact Qwest.

As Qwest demonstrates in the attached Opposition, the positions taken by All American and Aventure are decisively wrong. The Commission's determination that a failure by a customer (including a carrier customer) to pay a bill submitted by another carrier for service does not constitute a violation of the Act is both correct and consistent with long-standing precedent. It is also directly supported by the Supreme Court precedent upon which All American relies --

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[4] Contrary to the implication in the Aventure Petition, Qwest does not take the position that it can not be sued if it fails to pay bills sent to it by carriers. Qwest claims only that any such action does not arise from Sections 201 or 203 of the Act, and that Sections 206-208 of the Act do not provide a basis for jurisdiction over such an action.

[5] Aventure Petition at 4.

Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.[6] However, Qwest does agree that the issue is important and that, to the extent the Commission addresses the issues raised in the All American and Aventure Petitions, participation by other affected parties (including Qwest) is essential.

Accordingly, Qwest respectfully requests that the attached Opposition to Petition for Reconsideration or Clarification be accepted and considered by the Commission.

Respectfully submitted,

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Attorneys for

QWEST COMMUNICATIONS COMPANY, LLC

March 4, 2011

[6] 550 U.S. 45 (2007).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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All American Telephone Co., Inc.,	)	
e-Pinnacle Communications, Inc.	)	
and Chasecom,	)	
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Complainants,	)	
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v.	)	File No. EB-10-MD-003
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AT&T Corp.,	)	
	)	
Defendant.	)	

OPPOSITION OF QWEST COMMUNICATIONS COMPANY, LLC TO PETITIONS FOR RECONSIDERATION OR CLARIFICATION

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Its Attorneys

March 4, 2011

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Before the
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AT&T Corp.,	)	
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OPPOSITION OF QWEST COMMUNICATIONS COMPANY, LLC TO PETITIONS FOR RECONSIDERATION OR CLARIFICATION

Qwest Communications Company, LLC (Qwest) hereby files this Opposition to petitions for reconsideration or clarification filed by All American Telephone Co., *et al* (All American) and Aventure Communication Technology, L.L.C. (Aventure) in the above-captioned docket.[1]

I. INTRODUCTION AND SUMMARY.

In the *Order*,[2] the Commission, acting on a referral from a federal district court, ruled that it was without jurisdiction to adjudicate a complaint by a carrier to collect unpaid bills sent to another carrier. The reasoning behind this conclusion is simple. Sections 206-208 of the Act, which provide the jurisdictional basis for the Commission to adjudicate complaints against carriers, are limited to complaints that the defendant carrier violated a provision of the

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[1] Petition for Reconsideration or Clarification of All American Telephone Co., Inc., e-Pinnacle Communications, Inc., and Chasecom, filed Feb. 22, 2011; Petition for Reconsideration or Clarification of Aventure Communication Technology, L.L.C., filed Feb. 22, 2011.

[2] *In the Matter of All American Telephone Co., et al., v. AT&T Corp.*, Memorandum Opinion and Order, File No. EB-10-MD-003, FCC 11-5 (rel. Jan. 20, 2011).

Communications Act. Because the failure of a carrier to pay its bills is not a violation of the Act, the Commission's complaint jurisdiction does not extend to carrier collection actions. A contrary conclusion would itself violate the Act. Hence the complaint filed by All American was denied.

All American presents a battery of claims to challenge this basic proposition, but they can be simply summarized. All American argues that a failure to pay a carrier's bill is indeed a violation of the Act (at least if the customer is also a carrier), and that the numerous Commission decisions holding that the Commission does not have jurisdiction to adjudicate collection actions, simply means that the Commission will not adjudicate collection actions even though a failure to pay a carrier's bills does violate the Act. That is, All American posits that non-payment of carrier bills constitutes a special class of Act violations over which the Commission has chosen not to exercise jurisdiction. All American deduces from this that the Commission is without jurisdiction to determine whether non-payment of bills is an Act violation at all, although All American also claims that the Commission has in fact already ruled that non-payment does violate the Act. All American also argues that its position is vindicated by the recent Supreme Court decision in *Global Crossing Telecommunications, Inc. v. Metrophones, Inc.*,[3] in which a Commission rule specifically requiring that carriers make Commission-prescribed payments to payphone providers pursuant to an explicit statutory provision was upheld by the Supreme Court.

As is discussed below, All American has it completely backwards. The reason that the Commission does not have jurisdiction over carrier collection actions is that the failure of a carrier to pay its bills is not a violation of the Act. The Commission has expressly so held.

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[3] All American Petition at 19-20, n. 61; 550 U.S. 45 (2007).

Moreover, the jurisdictional scenario painted by All American, pursuant to which the Commission could simply refuse to adjudicate a violation of the Act by a carrier (that is, decline to adjudicate a carrier collection action even though failure to pay constituted an Act violation) totally misperceives the nature of the Commission's discretion in those areas where it has been granted adjudicatory authority under the Act. If the failure of a carrier to pay its bills were in fact a violation of the Act, the Commission could not lawfully decline to adjudicate carrier collection actions.

This does not mean, of course, that carriers are free to avoid paying their lawful bills. Collection actions by carriers in proper courts are routine,[4] and Qwest is not aware of a single case in which it was held that a carrier was without remedy to collect its lawful debts. But there is a big difference between owing money to a carrier and violating a federal statute. And the law is clear - no violation of the Act occurs when a carrier, for whatever reason, does not pay the bills of another carrier in a timely fashion.[5]

II. ALL AMERICAN'S CLAIM THAT THE COMMISSION CANNOT CONCLUDE THAT A CARRIER'S FAILURE TO PAY THE BILLS OF ANOTHER CARRIER DOES NOT VIOLATE THE ACT MISCONSTRUES THE NATURE OF THE COMMISSION'S JURISDICTION, RESPONSIBILITIES AND PRECEDENTS.

All American's basic claim is simple. Faced with a mountain of Commission precedent to the effect that the Commission is without jurisdiction to adjudicate carrier collection actions, All American contends that the Commission is without jurisdiction to determine whether the

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[4] While courts are divided over whether a collection action pursuant to a federal tariff presents a federal question for jurisdictional purposes, there is no question that the collection actions can be brought in some court. *Compare*, *American Telephone and Telegraph Company v. The City of New York,* 83 F.3d 549, 552 (2d Cir. 1996) with *MCI Telecommunications Corporation v. Credit Builders of America, Inc.,* 980 F.2d 1021 (5th Cir. 1993), *reh'g denied*, 986 F.2d 1420 (1993).

[5] All American argues that because most courts have found that a carrier collection action presents a federal question, this means that a carrier's failure to pay a bill constitutes a violation of the Act. All American Petition at 16-19. This argument is simply a non-sequitor.

failure of a carrier to pay its bills violates the Act. Thus, contends All American, the ruling by the Commission that affirms that non-payment does not equate to an act violation is novel and wrong.

But All American simply has it backwards. The reason that the Commission lacks jurisdiction over carrier collection actions is that a failure of a carrier to pay its bills, justified or not, does not constitute a violation of the Act. And the Act provides adjudicatory authority to the Commission only for violations of the Act.[6] Thus, because failure to pay a carrier's bills is not a violation of the Act, the Commission does not have jurisdiction over carrier collection actions.[7]

This fundamental premise was most clearly stated in *U.S. TelePacific Corp. v. Tel-America of Salt Lake City*.[8] In that case the complainant brought an action against another carrier for failure to pay tariffed access charges: "TelePacific alleges that Tel-America's failure to pay tariffed access charges for which TelePacific has billed Tel-American since 1999 constitutes an unjust practice under section 201(b) of the Act."[9] The Commission therefore dismissed the complaint, relying on several cases in which the Commission had expressly ruled in the past that a failure to pay a tariffed charge did not amount to a violation of the Act.[10] The

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[6] Section 206 of the Act provides for carrier damages if a carrier does anything "prohibited or declared to be unlawful, or shall omit or do any act, matter, or other thing in this [Act] required to be done. . . ."

[7] *See Order* ¶ 10 n. 32 for a list of the so-called "Collection Cases" holding to this effect.

[8] *See In the Matter of U.S. TelePacific Corp. d/b/a TelePacific Communications v. Tel-America of Salt Lake City, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 24552 (2004) (*TelePacific*).

[9] *Id.* ¶ 1. *See also id.* at 24555-56 ¶ 8.

[10] *See id.* at 24555, n. 27, citing *Beehive Tele., Inc. v. Bell Operating Cos.*, Memorandum Opinion and Order, 10 FCC Rcd 10562, 10569 ¶ 37 and n. 90 (1995) ("This Commission is not "a collection agent for carriers with respect to unpaid tariffed charges;' thus, 'the BOCs cross claim does not allege a violation of the Act over which we have jurisdiction'") . . . ; *Illinois Bell Tel. Co. v. AT&T*, Order, 4 FCC Rcd 5268, 5270 ¶ 18 (1989) ("The complainants do not allege that AT&T, in its role as a carrier, acted or failed to act in contravention of the Communications

Commission noted the difference between the non-payment of a bill by a carrier and a failure by a carrier to pay payphone compensation, a charge actually required by the Act itself and enacted as a rule by the Commission:

> We note that the Commission does entertain claims to recover unpaid payphone compensation pursuant to section 276 of the Act, . . . and sections 64.1300 through 64.1320 of the Commission's rules. . . . Unlike the statutory provisions and Commission rules regarding access charges -- which speak only to the duties of the charging carrier and not to the duties of the customer -- section 276 of the Act and section 64.1300 of the Commission's rules specifically impose an obligation on the "customer" to pay payphone compensation charges. Therefore, a failure to pay payphone compensation charges constitutes a violation of the Act itself, which is actionable under section 208.[11]

This basic proposition was recently reaffirmed in another context:

> Specifically, whereas the payphone compensation rules directly impose payment duties on the payor, the rules and statutory provisions regarding the charges at issue in other kinds of "collection actions" impose duties only on the payee (i.e., duties to impose charges in a certain manner and/or in a certain amount) and not on the payor. *See, e.g., Telepacific v. Tel-America Order*, 19 FCC Rcd at 24556, n.28. Thus, the failure to pay in the latter situation does not contravene the Act or our rules, though it may be unlawful on other grounds and thus actionable in court. *See, e.g., TelePacific v. Tel-America Order*, 19 FCC Rcd at 24555-56 ¶¶ 8-10.[12]

It has always been clear that the reason the Commission does not have jurisdiction over collection actions is that the failure of a carrier to pay its bills does not constitute a violation of the Act.

This becomes clearer when one comprehends the necessary premise of All American's position -- that a carrier's failure to pay a bill is a violation of the Act but the Commission has

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Act . . . Rather, they allege conditionally that AT&T may have failed to pay the lawful charge for service. Such allegations do not state a cause of action[.]")

[11] *TelePacific*, 19 FCC Rcd at 24556, n. 28.

[12] *In the Matter of APCC Services, Inc. v. NetworkIP, LLC*, Order on Review, 21 FCC Rcd 10488, 10493, n. 46 (2006). *See also, Contel of the South, Inc. v. Operator Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 548, 551, n. 22 (2008).

declined to exercise jurisdiction over complaints alleging this particular violation. This position is untenable -- the Act's delegation of adjudicatory authority to the Commission is not a matter of discretion. Section 207 of the Act expressly provides that a person injured by a carrier's violation of the Act may bring an action at the Commission. It does not give the Commission the authority to simply decide that certain actions lawfully brought before the Commission under Section 207 will not be heard. Such abdication of the Commission's statutory responsibilities is nowhere countenanced in the Act.

The lead case to this effect is *American Telephone and Telegraph Company v. FCC.*[13] In that case AT&T had brought a formal complaint against MCI, claiming that MCI's offering of non-tariffed interstate services violated the Act. The Commission dismissed the complaint, in part because it was addressing the issue of the lawfulness of untariffed resold offerings in a rulemaking. The Court of Appeals vacated the Commission's ruling, finding that the Commission had the statutory obligation to act on AT&T's formal complaint:

> The agency's responsibilities as an adjudicator are especially clear under the Communications Act. Sections 206-208 of the Act give AT&T the right to press a claim for damages suffered due to violation of the Act either in federal court or before the Commission. . . . The statute thus expressly sets up the Commission as an adjudicator of private rights. The question before the Commission as the adjudicator was whether or not MCI has been, and currently was, violating the law. If it was, at a minimum (putting aside the question of whether AT&T has a right to damages) AT&T was entitled to a cease and desist order at that point. The FCC's proposal to consider the general problem AT&T raises in a future rulemaking -- a process designed to consider whether to issue new normative standards -- is, when one thinks hard about it, a non-response to the complaint. It is similar to a judge who dismisses a complaint based on a federal statute because he has been informed that Congress is conducting hearings on whether to change the statute. Like the judge, the agency has an obligation to decide the complaint under the law currently applicable.[14]

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[13] *American Telephone and Telegraph Company v. FCC,* 978 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI v. AT&T,* 509 U.S. 913 (1993).

[14] *Id.* at 732 (footnote omitted).

> To the extent that the Commission thought it had discretion to postpone decision to a rulemaking, it misunderstood its role as an adjudicator.[15]

Basically, a plaintiff charging a violation of the Act in a formal complaint to the Commission under Sections 206-208 has the right to have its claim adjudicated. The Commission does not have the authority to decline to make such an adjudication. In the array of cases determining that the Commission does not have jurisdiction to adjudicate carrier collection actions, the Commission has uniformly held, either explicitly or implicitly, that a claim that a carrier had not paid its bills did not allege a violation of the Act. When All American alleges that the Commission has not decided this issue, and indeed is without authority to decide this issue, it is simply wrong.[16]

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[15] *Id.* at 733. *See also*, *Teva Pharmaceuticals, USA, Inc. v. United States Food and Drug Administration*, 182 F.3d 1003, 1010 (D.C. Cir. 1999) ("[L]itigants have a right to adjudication of their claims."); *Southwestern Bell Corporation v. FCC*, 43 F.3d 1515, 1518-19 (D.C. Cir. 1995).

[16] As a brief aside, All American recites a number of cases in which the Commission has spoken critically of what is called "self help," the practice of a customer withholding payments based on the argument that the charge was unreasonable and/or unlawful. All American Petition at 12-16. These cases generally arise in the context of a carrier threatening to disconnect a non-paying customer, and the concomitant petition to the Commission for an order preventing disconnection. While the Commission has on a number of occasions expressed concern about some of the potential consequences of "self help," and indeed Qwest agrees that carriers should pay their lawful bills, these cases do not stand for the proposition that carrier non-payment of a bill violates the Act. The best summary of the cases relied on by All American is found at *Bell Atlantic-Delaware, Inc. v. Global NAPS, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20665, ¶ 29 (2000):

> As for Global NAPs' "self-help" arguments, the cases cited by Global NAPs in support of its claims do not apply here.n72 Each of those cases arose in the context of requests for emergency or interim relief in which the movants sought to avoid disconnection of telephone services for failure to pay their bills. In each case, the Commission found that such relief was inappropriate in "self-help" situations because the movant had failed to demonstrate it "would be irreparably injured by paying the disputed amounts ... or by meeting ... security or advance payment requirements, and that it cannot be made whole should it ultimately prevail on the merits of its complaint."n73 Thus, the cases cited by Global NAPs do not stand for the proposition that carriers who engage in self-help may not file

III. THE GLOBAL CROSSING CASE STANDS PRECISELY FOR THE OPPOSITE PROPOSITION THAN THAT FOR WHICH ALL AMERICAN CITES IT.

All American relies heavily on the Supreme Court case of *Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*,[17] so much so that it attaches a copy of the Supreme Court's opinion to its Petition. Qwest agrees that *Global Crossing* is an important precedent in analyzing the issues presented by All American. However, the decision stands for exactly the opposite conclusion than the one for which All American cites it.

All American contends that *Global Crossing* stands for the proposition that a failure of a carrier to pay tariffed charges is, as a matter of law, a violation of the Act.[18] However, that is not what the decision says at all. To the contrary, in *Global Crossing*, in implementing a statute that required that payphone providers receive fair compensation for connecting callers to carrier networks, the Commission implemented a rule that required "per call" compensation to be paid

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a formal complaint. Rather, these cases only mean that the use of "self-help" undercuts a claim of irreparable injury for the purpose of emergency relief.n74

n72 *See* Answer at 6 n.9, P15 n.9 (citing *Communique Telecomm.*, 10 FCC Rcd 10399, 10405 (1995); *Business Choice Network v. AT&T*, 7 FCC Rcd 7702, 7702 (1992); *Affinity Network, Inc. v. AT&T*, 7 FCC Rcd 7885 (1992); *Nos Commun., Inc. v. AT&T*, 7 FCC Rcd 7889 (1992); *Business WATS, Inc. v. AT&T*, 7 FCC Rcd 7942 (1992); *MCI Telecomm. Corp.*, 62 F.C.C. 2d 703, 706 (1976)). In its Proposed Conclusions of Law, Global NAPs also quotes the following statement in support of its argument: "the Commission previously has stated, moreover, that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations." *Brooten v. AT&T*, 12 FCC Rcd 13343, 13351 n.53 (Com. Car. Bur. 1997), *quoted in* Answer at 57-58, P11. But this statement does not support Global NAP's argument. Rather, the quoted language merely states that a customer should pay its bills under a carrier's lawful tariff where the customer nevertheless disputes those charges. (footnotes 73 and 74 deleted).

[17] 550 U.S. 45 (2007). All American Petition at 19-22 and nn. 61-64.

[18] *Id.*

by long distance carriers to payphone providers. The Commission expressly determined that the failure of a carrier to comply with this rule would constitute a violation of the Act.[19] The Supreme Court affirmed the reasonableness of the Commission's rule in the context of the statutory provision pursuant to which it was adopted. The Court was very careful to explain that it was not endorsing a general conclusion that all actions by a carrier, even those that might be in violation of Commission rules, could give rise to a violation of the Act. In fact the Court was careful not to endorse a theory pursuant to which the Commission might have broad discretion to declare that rule violations amounted to violations of the Act. Quite to the contrary, the Court made it clear:

> We do not suggest that the FCC is required to find carriers' failures to divide revenues to be § 201(b) violations in every instance [citing *US TelePacific, supra.*] Nor do we suggest that every violation of FCC regulations is an unjust and unreasonable practice. Here there is an explicit statutory scheme, and compensation of payphone operators is necessary to the proper implementation of that scheme. Under these circumstances, the FCC's finding that the failure to follow the order is an unreasonable practice is well within its authority.[20]

Global Crossing thus sets the basic principle in this case. Under some circumstances the Commission may, by rule, determine that a failure to make payments directed by the Commission constitutes a violation of the Act. In this case, where no such rule exists, and the Supreme Court has spoken approvingly of the Commission's approach in the *TelePacific* case, it is clear that *Global Crossing* is totally consistent with the Commission's position in the *Order* in this proceeding.

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[19] *In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975, 19990 ¶ 32 (2003) ("A failure to pay in accordance with the Commission's payphone rules, such as the rules expressly requiring such payment that we adopt today, constitutes both a violation of section 276 and an unjust and unreasonable practice in violation of section 201(b) of the Act.")

[20] 550 U.S. at 56.

IV. THE FACTS IN THE TRAFFIC PUMPING CASES ILLUSTRATE THE WISDOM OF THE PRINCIPLE THAT THE FAILURE OF A CARRIER TO PAY ITS BILLS IS NOT A VIOLATION OF THE ACT.

The factual background against which the issue of non-payment of bills by carriers arose in the All American case demonstrates the wisdom of the basic premise that a carrier's failure to pay its bills is not a violation of the Communications Act. While this essential conclusion applies across the board to all non-payment situations in which there is not a specific congressional directive (or a lawful FCC rule) to the contrary, it is well to recall that the All American case is a traffic pumping case. While Qwest is not a party to the All American litigation, Qwest has, as is indicated by the Aventure petition, refused to pay the bills of a number of traffic pumping LECs for artificially stimulated traffic. Such action in a traffic pumping context is the only reasonable action that Qwest could take, and the necessity of these actions further documents the essential wisdom of the position affirmed in the Order.

Qwest has been dealing with traffic pumping LECs for some time now. While Qwest would not, in a normal business context, deliver traffic to traffic pumping LECs at all, it is required to do so by directive of the Commission.[21] Thus, Qwest delivers traffic to traffic pumping LECs to be processed on behalf of their business partners, called "Free Service Providers" or "FSPs," because it is required to do so, not because it wants to do so. The tariffs of the traffic pumping LECs do not allow them to bill Qwest for this functionality, [22] nor could the tariffs lawfully be amended to cover this traffic.[23] In other words, traffic pumping LECs are

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[21] *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 (2007).

[22] *In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company,* Second Order on Reconsideration, 24 FCC Rcd 14801 (2009); Third Order on Reconsideration, 25 FCC Rcd 3422 (2010).

[23] *See* Formal Complaint of Qwest Communications Company, LLC, File No. EB-11-MD-001, filed Jan. 6, 2011.

billing Qwest for services that Qwest does not desire to receive, pursuant to tariffs that do not apply to the services, and which could not be lawfully amended to cover the services for which the bills were proffered. The notion that, in these circumstances, Qwest could be in violation of the Act for declining to pay the bills of the traffic pumping LECs for artificially stimulated traffic is obviously unsustainable -- but that is ultimately precisely what the All American Petition seeks to establish.

V. CONCLUSION.

For the foregoing reasons, the Petitions of All American and Aventure should be denied.

Respectfully submitted,

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March 4, 2011

CERTIFICATE OF SERVICE

I, Joan O'Donnell, do hereby certify that I have caused the original and four copies plus one copy for stamp and return of each of the foregoing **PETITION OF QWEST COMMUNICATIONS COMPANY, LLC TO ACCEPT OPPOSITION FILING and OPPOSITION OF QWEST COMMUNICATIONS COMPANY, LLC TO PETITIONS FOR RECONSIDERATION OR CLARIFICATION** to be filed today with the Secretary of the FCC via D.C. courier in the Formal Complaint proceeding File No. EB-10-MD-003; with a copy to be served today (as indicated below) via courier or facsimile/first-class U.S. Mail, postage prepaid, and via electronic mail on the following:

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March 4, 2011