

Commission Takes Action in Conference Calling Formal Complaint Case

– IXC receives rate-of-return relief, but LEC wins key substantive points; related issues tied-up in a rulemaking

On October 2, 2007, the FCC took two actions to address intercarrier compensation issues associated with phone calls made to companies that provide conference calling services. First, the Commission granted in part and denied in part a complaint by Qwest Communications against Farmers and Merchants Mutual Telephone Company. Second, the FCC issued a Notice of Proposed Rulemaking (“NPRM”) to address related intercarrier compensation issues more generally.

Qwest v. Farmers

In *Qwest v. Farmers*, the FCC answered a number of questions that should favor LECs in litigation pending in Iowa, Minnesota, South Dakota, and elsewhere regarding intercarrier compensation for calls to conference bridging services. Key findings are as follows:

- Calls to conference calling companies are compensable under the FCC’s access charge regime.
 - Conference calling companies are “end users.”
 - LECs provide “termination” in transmitting calls to conference calling companies, just like any other “end user.”
 - A LEC’s payment of “marketing fees” to calling card companies does not change the calling card companies’ status as customers, and thus end users.
- The FCC confirmed that any tariffed-based collections action by a LEC must go to court, not the FCC.
- Regulated LECs, like Farmers, may not have an access charge rate of return greater than 11.25%; however, this same limitation does not apply to CLECs, who are entitled to mirror the incumbent’s tariffed rate.

Notice of Proposed Rulemaking

In the companion NPRM, the Commission seeks comment on a number of tentative conclusions and other items related to whether the current tariffing rules are sufficient to ensure that all LECs are charging just and reasonable rates, as required by section 201(b) of the Communications Act.

- Tentative Conclusions
 - “[A] rate-of-return carrier that shares revenue, or provides other compensation to an end user customer, or directly provides the stimulating activity, and bundles those costs with access is engaging in an unreasonable practice that violates section 201(b) and the prudent expenditure standard.” (§19)
 - “[A]verage per minute switching costs do not increase proportionately to average per minute revenues as access demand increases, and that, as a result, rates that may be just and reasonable given a specific level of access demand may not be just and reasonable at a higher level of access demand.” (§21)
 - Carriers regulated under FCC rules “61.38 and 61.39 ... that file their own tariffs should be required to include language in their traffic-sensitive tariffs similar to the following:
 - If the monthly local switching minutes of the issuing carrier exceeds [] percent of the local switching demand of the same month of the preceding year, the issuing carrier will file revised local switching and transport tariff rates to reflect this increased demand within [] days of the end of that month. (§21)

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- “[A]verage schedule formulas can only yield reasonable estimates of an average schedule carrier’s cost when the demand is within the range used to develop the formulas.” (§25)
- Requests for Comment
 - How does a change in traffic volume impact cost recovery? (§§14-16)
 - Whether “payment of compensation by a carrier to a customer, such as an entity providing an access stimulation service, violates section 201 or 202, even if the carrier does not seek to recover the cost of the compensation through access charges”? (§21)
 - What are “the incentives of carriers in the NECA traffic-sensitive pool to engage in traffic stimulation and the methods they could employ to realize the benefits of the stimulation”? (§21)
 - “[W]hat [would be] an appropriate growth rate ... to trigger a carrier’s having to make a new tariff filing [e.g., a 30, 50, or 100 percent growth in demand over the demand used in setting the rates in the currently effective tariff] or over the local switching demand in the same month of the preceding year”? (§22)
 - Should “the Commission ... adopt a rule requiring carriers to file revised tariffs whenever they enter into an arrangement that would have the effect of stimulating switched access traffic by some percentage”? (§22)
 - Should the “the Commission require section 61.39 carriers to file a certification with their tariff filings ... that it [is] not currently stimulating traffic and would not do so during the tariff period”? (§22)
 - Should “the Commission, on its own motion, ... forbear from enforcing the deemed lawful provision of section 204(a)(3) ... if a mid-course tariff filing is triggered by a sufficient increase in demand”? (§29)
 - Should the Commission require CLECs “relying on the rural exemption to tariff access rates higher than the competing incumbent LEC’s rates, or that benchmark their rates to rural LEC rates, to file quarterly reports of interstate access minutes and modify its tariffs if volumes are significantly higher than those of the relevant ILEC’s”? (§35)
 - Parties are invited “to address whether carriers are adopting traffic stimulation strategies with respect to forms of intercarrier compensation other than interstate access charges (e.g., reciprocal compensation).” (§38)

Comments are due 30 days from publication of the NPRM in the Federal Register, and reply comments are due 15 days there after. As a result, comments will likely be due in mid-November, and replies will likely be due in late November or early December.

If you have any questions or need additional information, please contact [Mike Hazzard \(mhazzard@wcsr.com\)](mailto:mhazzard@wcsr.com), [Ross Buntrock \(rbuntrock@wcsr.com\)](mailto:rbuntrock@wcsr.com), or [Danielle Benoit \(dbenoit@wcsr.com\)](mailto:dbenoit@wcsr.com).

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