



Federal Communications Commission
Washington, D.C. 20554

December 1, 2011

Mark J. Langer, Clerk,
United States Court of Appeals for
the District of Columbia Circuit
333 Constitution Avenue, Northwest
Washington, D.C. 20001

Re: *Farmers & Merchants Mutual Tel. Co. v. FCC*, No. 10-1093

Dear Mr. Langer,

The FCC hereby responds to Farmers' letter of November 29, 2011, discussing the recent order *Connect America Fund*, FCC 11-161 (Nov. 18, 2011).

There, in a rulemaking with only prospective effect, the Commission declined to prohibit (§§679-691) local exchange carriers (LECs) and conference companies from sharing revenue, but adopted rules to require lower access rates when certain triggers are met. The new rules reduce incentives to engage in traffic pumping. Farmers contends that the new rules "necessarily acknowledge[]" that when a LEC completes a call to a conference company, it provides "access service." Letter at 1-2.

Farmers is incorrect. The central question in this case is whether Farmers provided "switched access" service to Qwest *under the terms of its tariff*. The recent order has no bearing on that issue. It does not purport to interpret Farmers' tariff or address the specific factual circumstances – including Farmers' failure to bill for service and a host of other special arrangements antithetical to tariffed service – that led the Commission to conclude that the conference companies had not subscribed to service under Farmers' tariff. FCC Br. 13-17. On that particular record, the service provided to Qwest was not switched access service as defined by Farmers' tariff.

In the new order, the FCC rejected the proposition (§672) that "traffic directed to [conference companies] should not be subject to tariffed access charges *in all cases*." (emphasis added). In quoting the order, Farmers omits that critical italicized qualifier. Thus, even apart from the prospective-only effect of the new order, there is no inconsistency between that order and the orders on review here.

EXHIBIT B

In the orders before the Court, the Commission initially recognized that Farmers could bill Qwest for calls completed to conference companies, so long as the companies took service under Farmers' tariff subject to the required charges. FCC Br. 9-11. Only after evidence showed that the companies had no obligation to pay for service and had received benefits wholly inconsistent with a tariffed relationship did the Commission conclude that the conference companies were not "end users" of or "subscribers" to Farmers' tariffed service.

Respectfully submitted,

/s/ Joel Marcus

Joel Marcus
Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(202) 418-1745

cc: All Counsel per attached list

CERTIFICATE OF SERVICE

I, Joel Marcus hereby certify that on December 1, 2011, I electronically filed the foregoing Letter with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Others, marked with an asterisk, will receive service by mail unless another attorney for the same party is receiving service through CM/ECF.

John F. Cooney
Tony S. Lee
Christine McLaughlin
James U. Troup
Venable LLP
575 Seventh Street, N.W.
Washington, D.C. 20004
*Counsel for: Farmers and
Merchants Mutual Telephone
Company of Wayland, Iowa*

David H. Solomon
Russell P. Hanser
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037-1128
*Counsel for: Qwest
Communications Company LLC*

Robert J. Wiggers
Robert B. Nicholson
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Room 3224
Washington, D.C. 20530
Counsel for: USA

Craig J. Brown
Qwest Communications Corporation
607 14th Street, N.W.
Suite 950
Washington, D.C. 20005
*Counsel for: Qwest
Communications Company LLC*

Michael B. Fingerhut
Sprint Communications Company
L.P.
900 7th Street, N.W., Suite 700
Washington, D.C. 20001
Counsel for: Sprint

*Michael E. Glover
Karen Zacharia
Christopher M. Miller
Verizon
1320 North Courthouse Road
Ninth Floor
Arlington, VA 22201
Counsel for: Verizon

Scott H. Angstreich
Gregory G. Rapawy
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Counsel for: Verizon

Ross A. Buntrock
Jonathan E. Canis
Stephanie A. Joyce
G. David Carter
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
*Counsel for: Northern Valley
Communications, LLC*

*David L. Lawson
*James P. Young
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Counsel for: AT&T

Gary Liman Phillips
Matthew R. Sutherland
AT&T
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
Counsel for: AT&T

Robert B. McKenna
7552 South Emerson Circle
Centennial, CO 80122
*Counsel for: Qwest
Communications Company, LLC*

*Charles W. McKee
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251
Counsel for: Sprint

/s/ Joel Marcus

Joel Marcus