

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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

ORDER

Adopted: October 26, 2011

Released: October 27, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Order dismisses the Petition for Reconsideration or Clarification of Aventure Communication Technology, L.L.C.,<sup>1</sup> and the Petition of Qwest Communications Company, LLC to Accept Opposition Filing.<sup>2</sup> As discussed below, we dismiss the Aventure Petition for Reconsideration because Aventure has not satisfied the requirements for non-parties to seek reconsideration of a Commission order in an adjudicatory proceeding. Similarly, we dismiss the Qwest Petition to Accept Filing because Qwest has not demonstrated that it should be permitted to intervene in the proceeding.

II. BACKGROUND

2. This is a formal complaint proceeding effectuating a primary jurisdiction referral of litigation by the United States District Court for the Southern District of New York.<sup>3</sup> The parties to the

<sup>1</sup> Petition for Reconsideration or Clarification of Aventure Communication Technology, L.L.C., File No. EB-10-MD-003 (filed Feb. 22, 2011) (“Aventure Petition for Reconsideration”).

<sup>2</sup> Petition of Qwest Communications Company, LLC to Accept Opposition Filing, File No. EB-10-MD-003 (filed Mar. 4, 2011) (“Qwest Petition to Accept Filing”).

<sup>3</sup> See *All American Tel. Co., Inc. v. AT&T Corp.*, Order Referring Issues to the Federal Communications Commission, Case No. 1:07-cv-00861-WHP (S.D.N.Y. Feb. 5, 2010).

proceeding are complainants All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom (collectively, the “CLECs”), and defendant AT&T Corp. (“AT&T”). On January 20, 2011, the Commission issued a Memorandum Opinion and Order denying the CLECs’ complaint and holding that neither AT&T’s failure to pay the CLECs’ terminating access charges nor its failure to file a “rate complaint” with the Commission violated any provision of the Communications Act of 1934, as amended (“Act”).<sup>4</sup>

3. Aventure Communication Technology, L.L.C. (“Aventure”) – which is not a party to this proceeding – filed a petition for reconsideration of the *All American Order*.<sup>5</sup> Aventure is a rural local exchange carrier that has been “embroiled in litigation in federal district court in Iowa related to interexchange carriers’ ... refusals to provide payment for the access services they have been taking” from Aventure.<sup>6</sup>

4. Qwest Communications Company, LLC (“Qwest”) – also not a party to this proceeding – is one of the interexchange carriers involved in the Iowa litigation with Aventure. Qwest filed a petition seeking permission to file an opposition to the Aventure Petition for Reconsideration and to the CLECs’ Petition for Reconsideration.<sup>7</sup>

### III. ANALYSIS

#### A. We Dismiss the Aventure Petition for Reconsideration.

5. In order to seek reconsideration of a Commission order in an adjudicatory proceeding to which it was not a party, a petitioner must demonstrate that (1) the petitioner’s “interests are adversely affected” by the order, and (2) the petitioner has “good reason why it was not possible for [the petitioner] to participate in the earlier stages of the proceeding.”<sup>8</sup> Aventure claims that it is adversely affected by the *All American Order* because that *Order* allegedly is “vague” and “subject to multiple interpretations.”<sup>9</sup> According to Aventure, it will incur costs briefing the Iowa courts about the precedential value of the *All American Order* and defending itself against Qwest’s efforts to dismiss some of Aventure’s claims with prejudice based on the *All American Order*.<sup>10</sup>

6. The Commission previously considered – and rejected – the precise argument Aventure

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<sup>4</sup> *All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 723 (2011) (“*All American Order*”).

<sup>5</sup> See Aventure Petition for Reconsideration.

<sup>6</sup> Aventure Petition for Reconsideration at 1.

<sup>7</sup> See Qwest Petition to Accept Filing. See also Petition for Reconsideration or Clarification of All American Telephone Co., Inc., e-Pinnacle Communications, Inc., and Chasecom, File No. EB-10-MD-003 (filed Feb. 22, 2011) (“CLECs Petition for Reconsideration”). See also AT&T’s Opposition to Petition for Reconsideration, File No. EB-010-MD-003 (filed Mar. 4, 2011) (“AT&T Opposition to Petition for Reconsideration”).

<sup>8</sup> 47 C.F.R. § 1.106(b)(1).

<sup>9</sup> Aventure Petition for Reconsideration at 2-3.

<sup>10</sup> *Id.* at 3. Qwest has requested that Aventure “voluntarily withdraw all Communications Act claims from the pending federal court litigation, in light of the *All American Order*, or Qwest will move the court to dismiss those claims with prejudice.” *Id.* at 2.

makes in this case. In *AT&T v. BTI*,<sup>11</sup> the Commission dismissed a petition for reconsideration filed by five CLECs and a CLEC trade association that were not parties to a complaint proceeding under section 208 of the Act. The Commission held that the mere precedential value of an adjudicatory order in a section 208 complaint proceeding cannot “adversely affect” a non-party to the adjudication within the meaning of section 405(a) of the Act and section 1.106 of the Commission’s rules.<sup>12</sup> *AT&T v. BTI* compels the conclusion here that Aventure has not demonstrated that the *All American Order* “adversely affects” its interests under rule 1.106(b)(1).

7. Aventure further asserts that it was “neither given notice of the scope of the proceeding nor an opportunity to participate in the action,” because the complaint proceeding between the CLECs and AT&T is “restricted” for purposes of the *ex parte* rules.<sup>13</sup> We need not reach this argument since Aventure fails to satisfy the “adversely affected” component of rule 1.106(b)(1). We note, however, that the public is able to ascertain the “scope” of any proceeding – including a restricted proceeding – by reviewing the pleadings, which are publicly available in the Commission’s Reference Information Center.

#### **B. We Dismiss the Qwest Petition to Accept Filing.**

8. The Qwest Petition to Accept Filing cites no Commission rule or precedent as a basis for allowing Qwest to participate in the reconsideration phase of this complaint proceeding. Rather, the Petition simply argues that Qwest’s participation “at this time is warranted and is consistent with the public interest and orderly process,”<sup>14</sup> because 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.”<sup>15</sup> We construe Qwest’s request as being tantamount to a petition to intervene.

9. The Commission’s rules make no provision for filing of petitions to intervene in adjudicatory non-hearing proceedings.<sup>16</sup> In past complaint proceedings, however, the Commission has looked for guidance to the standard contained in rule 1.223(b), which requires a petition for leave to intervene as a party in a hearing to show, among other things, the “interest of petitioner in the proceedings” and “how such petitioner’s participation will assist the Commission in the determination of the issues in question.”<sup>17</sup>

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<sup>11</sup> *AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750 (2001) (“*AT&T v. BTI*”).

<sup>12</sup> *Id.*, 16 FCC Rcd at 21752-53, ¶¶ 6-7.

<sup>13</sup> Aventure Petition for Reconsideration at 3. See 47 C.F.R. § 1.1208 (Restricted Proceedings).

<sup>14</sup> Qwest Petition to Accept Filing at 1.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Commission rule 1.106(b)(1) addresses petitions for reconsideration filed by persons who are not parties to the proceeding. 47 C.F.R. § 1.106(b). It does not speak to non-parties’ attempts to file *oppositions* to petitions for reconsideration.

<sup>17</sup> 47 C.F.R. § 1.223(b). See *Teleconnect Co. v. The Bell Company of Pennsylvania*, Memorandum Opinion and Order, 6 FCC Rcd 5202, 5206, ¶¶ 18-20 (Com. Car. Bur. 1991) (“Although this section specifically addresses intervention in an evidentiary hearing, we believe it to be a useful standard when considering the petition for intervention before us” in a formal complaint proceeding), *aff’d on review*, 10 FCC Rcd 1626 (1995). See also *JNE Investments, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 623, 627, ¶ 12 (2008) (noting that the “Commission’s Rules do not provide for petitions to intervene in non-hearing cases,” but looking to the “factors for intervention” in rule 1.223(b)).

10. The Qwest Petition to Accept Filing fails to satisfy the requirements for intervention. Specifically, even if Qwest has an “interest” in this proceeding, it has made no showing as to how its “participation will assist the Commission in the determination of the issues in question.”<sup>18</sup> Because, as discussed above, we dismiss the Aventure Petition for Reconsideration, Qwest has no need to respond to the arguments Aventure has advanced. Moreover, AT&T timely filed a 22-page opposition to the CLECs Petition for Reconsideration,<sup>19</sup> and Qwest does not contend that AT&T’s submission fails to adequately address the issues raised in that Petition. Accordingly, we dismiss the Qwest Petition to Accept Filing.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 208, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, and 405, and sections 0.111, 0.311, and 1.106 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, and 1.106, that the Petition for Reconsideration or Clarification of Aventure Communication Technology, L.L.C. IS DISMISSED.

12. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 0.111, 0.311, and 1.223 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, and 1.223, that the Petition of Qwest Communications Company, LLC to Accept Opposition Filing IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>18</sup> 47 C.F.R. § 1.223(b). See *Texas Cable and Telecommunications Assoc. v. GTE Southwest Inc.*, Order, 17 FCC Rcd 6261, 6265, ¶ 9 (2002) (rejecting a request to intervene in a pole attachment proceeding where the petitioner failed to show how its participation would assist in the resolution of the issues).

<sup>19</sup> See AT&T Opposition to Petition for Reconsideration.