

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

In the Matter of)	
)	
Qwest Communications Corporation,)	
)	
Complainant,)	
)	
v.)	File No. EB-07-MD-001
)	
Farmers and Merchants Mutual Telephone)	
Company,)	
)	
Defendant.)	

THIRD ORDER ON RECONSIDERATION

Adopted: March 16, 2010

Released: March 17, 2010

By the Commission:

I. INTRODUCTION

1. This Order denies a Petition for Reconsideration filed by Farmers and Merchants Mutual Telephone Company (“Farmers”).¹ In short, the Petition for Reconsideration asks the Commission to reconsider and reverse its November 25, 2009 Second Order on Reconsideration² because it is “arbitrary and capricious and contrary to law,” and because the Commission purportedly lacked jurisdiction to issue it.³ For the reasons below, we deny the Petition for Reconsideration.

II. BACKGROUND⁴

2. Qwest Communications Corporation (“Qwest”), an interexchange carrier (“IXC”), filed a formal complaint against Farmers, an incumbent local exchange carrier

¹ Petition for Reconsideration, File No. EB-07-MD-001 (filed Dec. 18, 2009) (“Petition for Reconsideration”).

² *Qwest Commc’ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801 (2009) (“*Second Recon Order*”).

³ Petition for Reconsideration at 1-2.

⁴ This proceeding has a lengthy history, which we will not recite in detail. Rather, we incorporate by reference the background sections contained in paragraphs 3 through 13 of the original order on the merits (see *Qwest Commc’ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 17973, 17974-77, ¶¶ 3-13 (2007) (“*Initial Liability Order*”) and paragraphs 2 through 9 of the *Second Recon Order*, 24 FCC. Rcd at 14802-04, ¶¶ 2-9.

(“ILEC”), on May 2, 2007.⁵ Qwest alleged that Farmers “engaged in an intentional scheme to collect unreasonably high terminating switched access charges by inflating the amount of traffic delivered to it by Qwest and other ... [IXCs] in a manner that rendered Farmers’ rates wholly unrelated to its costs.”⁶ Specifically, Qwest maintained – and discovery demonstrated – that Farmers had entered into commercial agreements with certain conference calling companies whereby the conference calling companies sent a high volume of traffic to numbers in Farmers’ exchange and, in return, Farmers paid money or other consideration to the conference calling companies.⁷ Farmers then assessed Qwest terminating access charges on those calls.⁸ Qwest argued that those charges were unlawful for a variety of reasons, and elected in its Complaint to have the amount of any damages resulting from Farmers’ conduct determined in a separate proceeding.⁹

3. In its *Initial Liability Order*, the Commission granted Count I of the Complaint, finding that Farmers violated section 201(b) of the Act by earning an excessive rate of return.¹⁰ The Commission ruled, however, that Qwest could not recover damages because the Farmers tariff at issue was “deemed lawful” under section 204(a)(3) of the Act.¹¹ The Commission further denied Counts II and III of the Complaint,¹² which alleged that Farmers’ tariff did not allow Farmers to assess terminating access charges on calls to conference calling companies because the service provided did not constitute switched access as defined in the tariff.

4. On November 1, 2007, Qwest filed a Petition for Partial Reconsideration and a Motion to Compel Production of Documents,¹³ arguing that evidence Farmers improperly withheld in discovery called into question the veracity of Farmers’ representations that the conference calling companies were customers of its tariffed service.¹⁴ The Commission granted Qwest’s Petition for Partial Reconsideration in part, initiating additional proceedings to consider the merits of Qwest’s arguments concerning the newly-identified evidence.¹⁵ Qwest filed its Second Supplement to Petition for Partial Reconsideration on May 29, 2008, which contained evidence supporting Qwest’s assertion that the conference calling companies, in fact, never took tariffed services from Farmers.¹⁶

⁵ Formal Complaint of Qwest Communications Corp., File No. EB-07-MD-001 (filed May 2, 2007) (“Complaint”).

⁶ Complaint at 1.

⁷ *Initial Liability Order*, 22 FCC Rcd at 17976, ¶ 9.

⁸ *Initial Liability Order*, 22 FCC Rcd at 17974, ¶ 3.

⁹ Complaint at 27, ¶ 59. See 47 C.F.R. § 1.722(d)(2) (A complainant seeking damages in a separate proceeding must “[s]tate clearly and unequivocally that the complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made.”).

¹⁰ *Initial Liability Order*, 22 FCC Rcd at 17980-83, ¶¶ 21-25; 47 U.S.C. § 201(b).

¹¹ *Initial Liability Order*, 22 FCC Rcd at 17983, ¶ 26; 47 U.S.C. § 204(a)(3).

¹² *Initial Liability Order*, 22 FCC Rcd at 17985-88, ¶¶ 30-39.

¹³ Qwest Communications Corporation’s Petition for Partial Reconsideration, File No. EB-07-MD-001 (filed Nov. 1, 2007) (“Petition for Partial Reconsideration”); Motion to Compel Production of Documents, File No. EB-07-MD-001 (filed Nov. 1, 2007).

¹⁴ Petition for Partial Reconsideration at 5-14.

¹⁵ *Qwest Commc’ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, Order on Reconsideration, 23 FCC Rcd 1615 (2008) (“*First Recon Order*”). See 47 C.F.R. § 1.106(k)(1) (If the Commission grants a petition for reconsideration in part, it may “[o]rder such other proceedings as may be necessary or appropriate.”).

¹⁶ Second Supplement to Petition for Partial Reconsideration, File No. EB-07-MD-001 (filed May 29, 2008) (“Second Supplement”).

5. In the *Second Recon Order*, the Commission, relying on the new evidence brought to light by Qwest, reversed its earlier decision and granted Counts II and III of the Complaint.¹⁷ The Commission determined that Farmers violated sections 201(b) and 203(c) of the Act, rendering Farmers liable to Qwest for damages to be determined in a subsequent proceeding.¹⁸ The Commission further ordered Qwest to file any supplemental complaint for damages within sixty days of the release of the *Second Recon Order*.¹⁹ Farmers filed its Petition for Reconsideration on December 18, 2009.

III. DISCUSSION

A. Section 405(b)(1) of the Act Did Not Deprive the Commission of Jurisdiction to Issue the *Second Recon Order*.

6. Citing section 405(b)(1) of the Act,²⁰ Farmers argues that the *Second Recon Order* “constitutes unlawful agency action,” because the Commission did not issue the order within 90 days of Qwest’s filing of the Second Supplement to its Petition for Partial Reconsideration.²¹ We find that the 90-day deadline for issuing an order granting or denying petitions for reconsideration under the Act is inapplicable here.²² Qwest filed its Petition for Partial Reconsideration on November 1, 2007. Within 90 days, the Commission released an order granting in part the Petition for Partial Reconsideration: that order satisfied section 405(b)(1) of the Act because it granted in part Qwest’s petition for reconsideration within 90 days after it was received by the Commission. Also in that order, the Commission initiated additional proceedings to compel production of and to consider previously undisclosed evidence. Qwest’s Second Supplement was submitted as part of those additional proceedings. The Second Supplement was not itself a separate petition for reconsideration of an order, decision, report or action taken by the Commission. Thus, in accordance with its rules, the Commission appropriately deferred a ruling on the merits pending completion of the Commission-initiated additional proceedings.²³

7. Nothing in section 405 of the Act required the Commission to resolve the issues raised in Qwest’s Second Supplement – submitted after the production of additional documents, multiple rounds of discovery, and briefing as part of Commission-initiated additional proceedings – within 90 days. Even if section 405 were applicable here, however, the Commission would not be without authority to act on Qwest’s Second Supplement. Judicial and Commission decisions uniformly hold that an agency retains its authority to act notwithstanding the passage of a

¹⁷ *Second Recon Order*, 24 FCC Rcd at 14805-13, ¶¶ 10-26.

¹⁸ *Second Recon Order*, 24 FCC Rcd at 14813, ¶¶ 26, 28.

¹⁹ *Second Recon Order*, 24 FCC Rcd at 14801, ¶ 1. On January 4, 2010, and February 18, 2010, the Commission granted the parties’ Consent Motions for Extension of Time for Qwest to file its supplemental complaint for damages. See Consent Motion for Extension of Time, File No. EB-07-MD-001 (filed Dec. 28, 2009) and Consent Motion for Extension of Time, File No. EB-07-MD-001 (filed Feb. 17, 2009). Qwest presently must file any supplemental complaint for damages by May 24, 2010.

²⁰ 47 U.S.C. § 405(b)(1) (“Within 90 days after receiving a petition for reconsideration of an order concluding . . . an investigation under section 208(b) of this title, the Commission shall issue an order granting or denying such petition.”).

²¹ Petition for Reconsideration at 15. Thus, Farmers argues that the deadline for Commission action on the Second Supplement was August 27, 2008. Petition for Reconsideration at 19.

²² See 47 C.F.R. § 1.106(k)(1)(iii).

²³ See 47 C.F.R. § 1.106(k)(1)(iii) (“If the Commission . . . grants the petition for reconsideration in whole or in part, it may, in its decision: . . . (ii) Order such other proceedings as may be necessary or appropriate.”).

statutory deadline, if Congress has not specified otherwise:²⁴

It is well settled ... that where Congress has placed an agency under a legal obligation to render a decision within a stated time period but has not set forth the consequences of exceeding that period, ordinarily the time period is directory rather than mandatory, and an agency will not lose jurisdiction over the matter upon expiration of that period.²⁵

Thus, the Commission does not lose jurisdiction to decide a reconsideration petition if it fails to meet the 90-day deadline under section 405. Nonetheless, Farmers argues that Congress intended such a result, asserting that Congress expressed a desire to see petitions for reconsideration that are subject to section 405(b)(1) resolved “in a timely manner.”²⁶ Yet Farmers points to nothing in the statute or its legislative history to suggest that Congress intended that the consequence of missing the deadline for resolving petitions for reconsideration is that the Commission forfeits jurisdiction over such proceedings.²⁷

B. The Conclusions in the *Second Recon Order* Were Reasonably Based on the Evidence Produced During the Additional Proceedings Ordered by the Commission.

8. The Petition for Reconsideration asserts numerous arguments that Farmers raised – and the Commission addressed and rejected – in the earlier stages in this proceeding.²⁸ We decline to revisit those contentions here. Farmers fails to present any new evidence that would compel us to reconsider the Commission’s previous findings. Moreover, it is “settled Commission policy that petitions for reconsideration are not to be used for the mere reargument

²⁴ See, e.g., *Brock v. Pierce County*, 476 U.S. 253, 260-66 (1994) (despite statutory language that the Secretary of Labor “shall” issue a final determination as to misuse of funds within 120 days after audit or receipt of complaint of misuse, the Secretary does not lose power to recover misused funds after 120 days); *1993 Annual Access Tariff Filings Phase I*, *1994 Annual Access Tariff Filings*, Order Terminating Investigation, 20 FCC Rcd 7672, 7688, ¶ 39 (2005) (“[T]he Commission’s failure to conclude this tariff investigation within the statutory time frame does not affect our authority to conduct it to its conclusion.”); *2002 Biennial Regulatory Review*, Report, 18 FCC Rcd 4726, 4739 n.70 (2002) (“[E]ven were a statutory deadline missed, where Congress does not specify otherwise, agencies do not lose their power to act after the statutory deadline ... [W]here Congress intends the failure to meet a deadline to have a regulatory consequence, it is quite able to indicate its intent.”) (citations omitted); *AT&T Corp. v. Beehive Tel. Co., Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 11641, 11653, ¶ 23 (2002) (“It is well established that the expiration of a statutory deadline for the Commission to act does not divest the Commission of authority to continue moving toward resolution of a proceeding.”); *800 Data Base Access Tariffs and the 800 Service Management System Tariff*, Order on Reconsideration, 12 FCC Rcd 5188, 5193-94, ¶ 15 (1997) (“[T]he courts ... have held that administrative agencies retain their authority to act notwithstanding the passing of a statutory deadline.”).

²⁵ *Gottlieb v. Pena*, 41 F.3d 730, 733 (D.C. Cir. 1994) (citation omitted).

²⁶ Petition for Reconsideration at 18.

²⁷ Nor do Farmers’ many quotations from the *Formal Complaints Order* address the question at hand – i.e., what is the *result* of a failure to satisfy a 90-day deadline. Petition for Reconsideration at 17 (citing *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (“*Formal Complaints Order*”).

²⁸ See, e.g., Petition for Reconsideration at 8-12 (filed rate doctrine); 12-15 (tariff interpretation); 24-25 (evidence not withheld). See also *First Recon Order*, 23 FCC Rcd at 1618-20, ¶¶ 8, 11 (withheld evidence) and *Second Recon Order*, 24 FCC Rcd at 14802-11, ¶¶ 10-22 (tariff interpretation and filed rate doctrine).

of points previously advanced and rejected.”²⁹ Rather, we address below the new assertions Farmers makes, none of which we find persuasive.

1. Based on New Facts, the Commission Properly Determined that the Conference Calling Companies Were Not “End Users” Under Farmers’ Tariff.

9. Farmers states that the Commission’s determination in the *Second Recon Order* hinged upon a single issue – “whether payments are required to be made by the conference calling companies in order for them to have subscribed to Farmers’ services as set forth in its tariff.”³⁰ Farmers maintains that the Commission’s original order – the *Initial Liability Order* – answered this issue in the negative, and that the Commission should not have altered this conclusion without additional explanation. We disagree with Farmers’ contentions.

10. In its Answer, Farmers represented that the conference calling companies “are customers because they purchase interstate End User Access Service and pay the federal subscriber line charge.”³¹ This factual assertion was then uncontested, and the Commission accepted it.³² In fact, contrary to Qwest’s argument that Farmers’ payment of marketing fees to the conference calling companies that exceeded the conference calling companies’ payments to Farmers (*i.e.*, “refunds”) altered the conference calling companies’ status as end users,³³ the Commission concluded that this single factor did not affect the conference calling companies’ “end user” status.³⁴

11. On reconsideration, the landscape shifted dramatically. The record contained many more facts about the relationship between Farmers and the conference calling companies. Specifically, it became clear that the conference calling companies never paid subscriber line charges or made any other payments to Farmers and that Farmers never expected to be paid.³⁵ Moreover, in numerous respects, which the *Second Recon Order* recites in detail, Farmers and the conference calling companies did not structure their relationship in a manner consistent with Farmers’ tariff.³⁶ Thus, Farmers errs when it states that the *Second Recon Order* hinged upon the single issue of whether payments were required to be made by the conference calling companies in order for them to have subscribed to Farmers’ services. This was but one of several issues that the Commission evaluated in that order.

12. In short, Farmers withheld critical evidence during the earlier stages of this

²⁹ *In re S&L Teen Hosp. Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900, ¶ 3 (2002) (citations omitted). See also *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control*, Order on Reconsideration, 23 FCC Rcd 3131, 3135 ¶ 11 (2008) (stating that the Commission has rejected petitions for reconsideration where the petitioner essentially repeats previously-relied upon arguments and “fails to raise new arguments or facts that would warrant reconsideration”) (citations omitted).

³⁰ Petition for Reconsideration at 2.

³¹ Answer at vii, 27. (The *Initial Liability Order* mistakenly cites the Complaint, rather than the Answer.)

³² It later came to light that the conference calling companies never paid the subscriber line charge. See *Second Recon Order*, 24 FCC Rcd at 14806, ¶ 12 & n.49; 14808, ¶ 16 & n.65.

³³ *Initial Liability Order*, 22 FCC Rcd at 17987, ¶ 36.

³⁴ *Initial Liability Order*, 22 FCC Rcd at 17987, ¶ 37.

³⁵ Consequently, there were no “refunds” as the *Initial Liability Order* presumed. The new facts included, *inter alia*, backdated invoices that were sent only in response to litigation deadlines. *Second Recon Order*, 24 FCC Rcd at 14808-09, ¶¶ 16, 18.

³⁶ *Second Recon Order*, 24 FCC Rcd at 14806-10, ¶¶ 12-20.

proceeding, and it now attempts to bind the Commission to a ruling that was predicated upon the incomplete factual record.³⁷ On reconsideration, the Commission is entitled to review new facts and to change its ruling based on the new facts.³⁸ That is precisely what happened here, and we find that the Commission provided adequate explanation in its *Second Recon Order* for changing its conclusion in the *Initial Liability Order*.³⁹

2. The *Initial Liability Order*'s Ruling on Count I of the Complaint Is an Independent, Alternative Basis for Finding that Farmers Violated Section 201(b) of the Act.

13. Farmers further asserts that the *Second Recon Order* is arbitrary and capricious because it left intact the *Initial Liability Order*'s conclusion that Farmers earned an excessive rate of return while simultaneously finding that the service provided by Farmers to the conference calling companies was not subject to tariff.⁴⁰ In essence, Farmers claims these two determinations are fatally inconsistent. We disagree.

14. In the *Second Recon Order*, the Commission expressly upheld the initial determination that Farmers had violated section 201(b) of the Act by virtue of its overearnings, and noted that its earlier finding on Count I:

does not preclude Qwest from collecting damages based on the conclusions in [*Second Recon Order*]. The tariffed rates are deemed lawful only to the extent that the tariff actually applies, and we have now determined that the tariff *does not apply* to the services that Farmers provided to Qwest with respect to traffic destined for the conference calling providers.⁴¹

We clarify that the Commission could have relied solely on its ruling on Count I as an independent, alternative basis for finding that Farmers violated section 201(b) of the Act.⁴² In other words, the Commission in the *Second Recon Order* properly found that the service provided to the conference calling companies was not tariffed, and the assessment of switched access charges to Qwest therefore violated sections 201(b) and 203(c) of the Act.⁴³ Even if the carriage of traffic from Qwest to the conference calling companies could be said to constitute switched

³⁷ *First Recon Order*, 23 FCC Rcd at 1618, ¶ 8.

³⁸ See 47 C.F.R. § 1.106(c). See also Qwest's Opposition to Petition for Reconsideration, File No. EB-07-MD-001 (filed Dec. 28, 2009) at 6-8 ("Reconsideration Opposition") (citing 14 factors identified by the Commission).

³⁹ See *supra* note 36

⁴⁰ Petition for Reconsideration at 20-21.

⁴¹ *Second Recon Order*, 24 FCC Rcd at 14813, n.98.

⁴² In its complaint, Qwest pled Counts II and III in the alternative. See Complaint at 22, 25, ¶¶ 43, 52. The Commission is permitted to rely on independent alternative grounds in a complaint proceeding. See, e.g., *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003); *AudioText International, Ltd. v. AT&T Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 3429, 3440 ¶ 30 (2004).

⁴³ Farmers suggests that this conclusion is contrary to law because it creates "a completely new form of traffic," or alternatively, that the Commission lacks jurisdiction because the service that Farmers provided to the conference calling companies is "private carriage." Petition for Reconsideration at 21-23. This argument is specious. At issue in the reconsideration proceeding was "whether the conference calling companies were 'end users' within the meaning of the switched access provisions of Farmers' tariff." *Second Recon Order*, 24 FCC Rcd at 14805, ¶ 10. The Commission has jurisdiction to make this determination. Moreover, as Qwest correctly notes, the Commission did not reach the question of how that traffic would be classified under its rules. Reconsideration Opposition at 19.

access under Farmers' tariff, however, the Commission could have reached the same conclusion by finding that Farmers' earning an excessive rate of return violated section 201(b) of the Act.

C. We Deny Farmers' Petition for Stay.

15. Farmers filed a Petition for Stay of the effectiveness of the *Second Recon Order* "pending reconsideration and appeal of that order."⁴⁴ The Commission considers requests for stay under a well-established four-part test.⁴⁵ Specifically, the petitioner must demonstrate that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.⁴⁶ Farmers has failed utterly to establish that it will incur irreparable harm as a result of the *Second Recon Order*.⁴⁷ Accordingly, we deny the Petition for Stay.⁴⁸

16. Farmers argues that Qwest is "just one of several carriers" that claim they are entitled to a refund from Farmers because the conference calling companies are not end users under Farmers' tariff.⁴⁹ According to Farmers, it "could be subject to claims of approximately \$22 million or more" if a stay is not granted, which purportedly would result in bankruptcy and possibly a cessation of Farmers' operations "if the litigation floodgates were suddenly opened."⁵⁰ This claim, however, is too speculative to warrant a stay.

17. As noted above, Qwest opted to have the Commission make a "determination of damages ... in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made."⁵¹ The *Second Recon Order* constitutes the Commission's liability determination. The Commission made no findings regarding damages, instead allowing Qwest to file a supplemental complaint for damages within 60 days of the release of the *Second Recon Order*.⁵² At this juncture, then, Farmers owes Qwest nothing and will not owe Qwest anything unless and until the Commission determines that damages are warranted. What's more, Farmers has presented no evidence that resolution of this case will translate into judgments for carriers in other litigation. Indeed, those carriers presumably will have to present their own evidence of damages, just as Qwest will in this case. To constitute "irreparable harm" that warrants equitable relief, injury must be "both certain and great ... actual and not theoretical."⁵³ Equitable relief will not be granted against something "merely feared as liable to occur at some indefinite time."⁵⁴ Because Farmers has offered evidence of nothing beyond hypothetical injury, we find that a stay is not warranted.

⁴⁴ Petition for Stay, File No. EB-07-MD-001 (filed Dec. 18, 2009) ("Petition for Stay") at 1.

⁴⁵ *In the Matter of Shaw Communications*, Memorandum Opinion and Order, 24 FCC Rcd 5852, 5855, ¶ 12 (2009) (citing *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

⁴⁶ *Id.*

⁴⁷ Similarly, Farmers also has not demonstrated good cause to stay the effectiveness of the Commission's *Second Recon Order*. See 47 CFR § 1.106(n) ("[U]pon good cause shown, the Commission will stay the effectiveness of its order or requirement pending a decision on the petition for reconsideration.").

⁴⁸ Moreover, as the above analysis explains, we disagree that the *Second Recon Order* is arbitrary and capricious, and conclude that Farmers will not prevail on the merits. Further, we give no credence to Farmers' public interest argument, because, as explained below, the *Second Recon Order* is a liability order that will not "bankrupt Farmers." Petition for Stay at 6.

⁴⁹ Petition for Stay at 4-5.

⁵⁰ Petition for Stay at 5.

⁵¹ 47 C.F.R. § 1.722(d)(2).

⁵² *Second Recon Order*, 24 FCC Rcd at 14801, ¶ 1.

⁵³ *Washington Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (citations omitted).

⁵⁴ *Id.*

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 201, 203, 206, 207, 208, 209, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 203, 206, 207, 208, 209, and 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Farmers' Petition for Reconsideration IS DENIED.

19. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 203, 206, 207, 208, 209, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 203, 206, 207, 208, 209, and 405, and sections 1.43, 1.44(e) and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.43, 1.44(e), and 1.106, that Farmers' Petition for Stay IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary