

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Great Lakes Communications Corporation)	
Superior Telephone Cooperative)	
)	
Petition for Declaratory Ruling)	WC Docket No. 09-152
to the Iowa Utilities Board and)	
Contingent Petition for Preemption)	
_____)	

REPLY OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. (“Sprint”), pursuant to *Public Notice* DA 09-1843 issued August 20, 2009, hereby respectfully submits its reply to the pleadings submitted on the above-captioned petition filed August 14, 2009 by Great Lakes Communications Corporation (“Great Lakes”) and Superior Telephone Cooperative (“Superior”) (collectively “Petitioners”).

In its Opposition filed September 21, 2009, Sprint explained that the Petitioners’ request to have the Federal Communications Commission (“FCC” or “Commission”) declare that a yet-to-be issued-decision by the Iowa Utilities Board (“IUB” or “Board”) in the complaint proceeding *Qwest Communications Corporation v. Superior Telephone Company et al.*, Docket FCU 07-2 to be invalid as contrary to FCC precedent and the Communications Act was totally without merit and should be summarily rejected. Opposition at 1. Indeed, Petitioners cited no precedent to support their absurd notion that the Commission had the authority to void a decision by a state commission before the decision was even issued.¹

¹ Sprint pointed out that the only possible explanation for the filing of a demonstrably frivolous petition with the FCC was to exploit the FCC processes to try to prevent the IUB from

Others agreed with Sprint that the Petition was without foundation. For example, the IUB informs the FCC that Petitioners' assumptions and suppositions as to what the IUB would find were incorrect. Petitioners "complain ... about rulings that the Board did not make." IUB Comments at 2. Similarly, Qwest states that the Petition is "based on an inaccurate description of the issues before the Board, the Board's open meeting and [Petitioners'] speculation as to what will be in [the Board's] order." Qwest Comments at 2. AT&T explains that "[t]he Petition is another in a long series of misguided filings and presentations by traffic-pumping local exchange carriers ["LECs"] ... ask[ing] yet again that the [FCC] intervene in fact-based adjudications and simply declare that, whatever the facts, their traffic stimulation schemes are per se reasonable as a matter of federal law." AT&T Opposition at 1, footnote omitted. And the Verizon Companies note the instant "Petition, along with the motion for stay filed with the Board, is clearly a last-ditch effort to preclude the release of an order that – if the public record is any indication – will include detailed fact-findings, based on a thorough review of extensive record material, that traffic pumpers in Iowa have engaged in behavior that ranges from uneconomic arbitrage to outright fraud." Verizon Opposition at 4.

Petitioners' scheme to manipulate the FCC's processes to prevent the release of the IUB decision (which has, as Verizon predicted, confirmed that the Petitioners and other defendants in the *Qwest v. Superior* proceeding were engaged in and continue to engage in "outright fraud") has failed. The IUB was not duped by the Petitioners' legal strategy, such as it was, and has

releasing its decision in the *Qwest v. Superior* proceeding. Thus, Petitioners filed a motion for stay with the IUB asking the IUB not to issue its decision in that proceeding because of its request to the FCC to declare the then yet-to-be issued decision null and void. See Sprint's Opposition at 5-6. The IUB also recognized that "what the Petitioners really seek is to cause the Commission to interfere with an IUB docket that is focused solely on issues related to *intrastate* access charges." IUB Comments at 1-2 (footnote omitted; emphasis in original).

issued its decision. In that decision the IUB made clear that its findings were based, *inter alia*, on the intrastate tariffs of the defendants on file with the IUB and the authorizations issued by the IUB to the defendants to provide service in Iowa.² Thus, the FCC is without jurisdiction to declare the decision null and void.³ See *Louisiana Public Service Commission v. FCC*, 106 S.Ct. 1890 (1986).

Moreover, there is absolutely no reason for the FCC to preempt Iowa from exercising its authority to determine whether the practices at issue in the *Qwest v. Superior* proceeding were lawful under Iowa law and regulation. As Sprint noted in its Opposition (at footnote 13) the mere fact that state action may have an ancillary impact on regulation in the federal sphere does not justify preemption. See *Diamond International v. AT&T*, 70 FCC 2d 656 (1979), *affirmed sub nom. Diamond International v. FCC*, 627 F.2d 489 (D.C. Cir 1980); *Thrifty Call* 19 FCC Rcd 22240 (2004). And preemption to enable Petitioners and the other defendants to continue their fraudulent practices is simply not in the public interest.

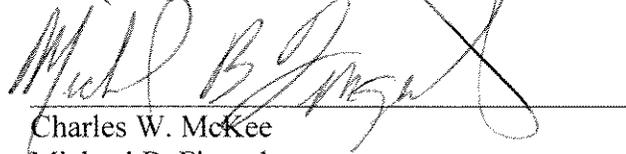
² The IUB referred matters to the FCC that were within the FCC's jurisdiction, *e.g.*, the fact that Adventure has fraudulently obtained federal universal service fund support, to enable the FCC to take whatever action it deems necessary and appropriate.

³ Petitioners' failure to prevent the release of the IUB decision by filing a frivolous declaratory ruling petition with the FCC apparently has not dampened Petitioners' zeal for filing meritless pleadings with the FCC in their desperate attempt to have the FCC intervene on their behalf in the IUB proceeding so as to enable them to continue their fraudulent schemes. Thus, on October 1, 2009, Petitioners filed an "Emergency Motion for Stay of the Iowa Utilities Board Final Order Pending Review" by the FCC of their declaratory ruling petition. The FCC can put an end to the Petitioners' exploitation of the FCC's processes and thereby conserve its limited resources by summarily rejecting the declaratory ruling as quickly as possible.

For the reasons set forth above as well as in Sprint's Opposition, the FCC should
summarily reject the instant Petition.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

A handwritten signature in cursive script, appearing to read "Michael B. Fingerhut", is written over a horizontal line.

Charles W. McKee
Michael B. Fingerhut
2001 Edmund Halley Drive
Reston, Virginia 20191
(703) 592-5112

Its Attorneys

October 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of Sprint Communications Company L.P. was served electronically or by First Class US Mail on this 6th day of October, 2009 to the parties listed below:



Jo-Ann Monroe

Doug Slotten
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
douglas.slotten@fcc.gov

Lynne Hewitt Engledow
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
lynne.engledow@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Ross A. Buntrock
Jonathan E. Canis
Adam D. Bowser
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036