

**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)	
_____)	

OPPOSITION OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. (“Sprint”) strongly opposes the so-called “Emergency Motion for Stay of Iowa Utilities Board Final Order Pending Review” filed October 1, 2009, in the above-captioned proceeding by Great Lakes Communications Corporation (“Great Lakes”) and Superior Telephone Cooperative (“Superior”) (collectively, “Movants”).¹ In support thereof, Sprint states as follows.²

Movants ask that the Federal Communications Commission (“FCC” or “Commission”) stay a decision by the Iowa Utilities Board (“IUB” or “Board”) in the complaint proceeding

¹ The Iowa Utilities Board issued its decision on September 21, 2009. Yet Great Lakes and Superior did not file their stay motion with the Federal Communications Commission until October 1, 2009. Given this 9-day delay, it is rather absurd that Great Lakes/Superior have attached the “Emergency” label to their motion.

² Great Lakes and Superior do not cite any FCC rule as authorizing their Motion here. Indeed, the only rule they mention is Section 1.298, 47 C.F.R. § 1.298, which gives the presiding officer in hearing proceedings the discretion under certain conditions to act on certain interlocutory requests without waiting for responsive pleadings to be filed. Thus, it unclear whether that provision even applies to this proceeding. Section 1.43 of the Commission’s Rules, 47 C.F.R. § 1.43 does authorize requests for stay but this provision may only be limited to stay requests of FCC orders and decisions. Nonetheless, out of an abundance of caution Sprint is filing this short opposition to the stay motion pursuant to Section 145(d) of the Commission’s Rules, 47 C.F.R. § 1.45(d).

Qwest Communications Corporation v. Superior Telephone Company et al., Docket FCU 07-2 (“*Qwest v. Superior*”) until such time as the FCC acts on their Petition for Declaratory Ruling seeking to have the FCC declare the then yet-to-be-issued IUB Order invalid as contrary to FCC precedent and the Communications Act.³ As Sprint and others demonstrated in their oppositions, comments and reply comments on the Great Lakes/Superior petition, their declaratory ruling request is without foundation and should be rejected. This Motion for Stay must also be rejected for the same reasons and for failure to meet the standard necessary for stay relief.

The record in this proceeding is replete with examples as to why the Petition is without merit. The FCC decisions relied upon by Great Lakes/Superior simply did not, as Great Lakes/Superior allege, find that the traffic pumping and access revenue schemes at issue before the IUB were lawful under the Communications Act. Thus, the IUB decision was not contrary findings under Iowa law. Sprint Opposition at 2-6. Moreover, the IUB acted entirely within its own jurisdictional authority and did not attempt any service within the FCC’s purview. *See* IUB Comments at 2 (Petitioners “complain ... about rulings that the Board did not make.”); Qwest Comments at 2 (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 Reply at 1 (“While the Order issued by the Board has important precedential and analytical effects in the proceedings before this Commission and in other forums, it falls well within the scope of the Board’s jurisdiction.”); AT&T Reply at 1-2 (“the Petition is both effectively moot and completely without merit” since “as the Final Order itself makes clear, the IUB acted entirely within its jurisdiction in addressing specific challenges to the practices of Iowa-certificated LECs pursuant to Iowa tariffs.”); Verizon Reply at 1 (“the Board scrupulously

³ Alternatively, Great Lakes/Superior asked that the FCC preempt any state action on traffic pumping.

adhered to the limits on its jurisdiction, and the Petitioners claims about a state agency about to interfere with the Commission's exclusive jurisdiction over interstate traffic were baseless speculation.”).

In their Motion, Great Lakes and Superior argue that their request meets the four-prong test for securing a stay as established by the courts, *see, e.g., Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), and adopted by the FCC. *See, e.g., In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards Reconsideration and Petitions for Stay*, 8 FCC Rcd 6393 (1993). Although the so-called facts and conclusions at law set forth in their Petition are completely unsupported, Movants allege that they are likely to prevail on the merits since the IUB's Order “was more egregious than expected.” Motion at 3. What is “egregious” here is not only that Great Lakes and Superior would persist in filing yet another petition with the FCC that mischaracterizes the IUB as having overstepped its jurisdictional bounds in its decision in *Qwest v. Superior* – the IUB did not – but also that they continue to make specious arguments causing the FCC to devote scarce resources dealing with this baseless matter that could be better spent in other endeavors such as issuing a final decision in its rulemaking proceeding examining access pumping schemes. *Notice of Proposed Rulemaking, Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd 17989 (2007).

The Movants' belief that they will prevail on the merits is based in large measure on the notion that the IUB Order conflicts with Commission precedent. Motion at 8. In this regard, Movants cite the FCC's decisions in *AT&T v. Jefferson*, 16 FCC Rcd 16130 (2001) (*Jefferson*); *AT&T v. Beehive*, 17 FCC Rcd 11641 (2002) (*Beehive*); *AT&T v. Frontier*, 15 FCC Rcd 4041 (2002) (*Frontier*), *Qwest v. Farmers & Merchants*, 22 FCC Rcd 17973 (2007), (*Farmers*)

modified on recon., 23 FCC Rcd 1615 (2008) (*Reconsideration Order*). Sprint has already shown why Movants' reliance on these cases is inapposite in its Opposition to their declaratory ruling petition and will not repeat its showing here. Sprint Opposition at 2-6. Sprint points out, however, that the fact that Movants continue to cite these cases as justifying a stay simply demonstrates the weakness of their arguments.

The Movants also argue that the IUB is attempting to "regulate the provision of interstate services," Motion at 9. This argument is disproven by even a cursory reading of the IUB Order. The IUB limited its findings to issues that are clearly within the State's authority, *e.g.*, interpreting the intrastate tariffs that the defendant LECs filed with the Commission and determining whether such LECs were complying with their certificates issued to them by IUB to operate in Iowa, and referred the matters that were not to the FCC for resolution, *e.g.*, Adventure's receipt of USF funds despite the fact it did not provide service to end users in Iowa. *See* AT&T Reply at 3-6; Verizon Reply at 3-5.

Moreover, contrary to the arguments of the Movants, the IUB was well within its delegated authority in directing the North American Numbering Plan Administrator (NANPA) and Pooling Administrator "to commence reclamation of Great Lakes' numbering resources," IUB Decision at 67. Under the plain language of Section 52.15(i) of the FCC's Rules, 47 C.F.R. § 52.15(i), a state commission is authorized to direct the NANPA and Pool Administrator to begin reclaiming the numbers assigned to a service provider if upon investigation the state commission has determined that the service provider "has not activated and commenced assignment to end users of their numbering resources within six months of receipt." 47 C.F.R. § 52.15(i)(5). Based on the evidence provided in the *Qwest v. Superior* investigation, the IUB found that Great Lakes has never provided service to end users and as such is not entitled to keep

the numbers it had been assigned. IUB Order at 66-67. In reaching such finding and in issuing its directive to the NANPA and Pool Administrator to begin reclaiming Great Lakes' numbers, the IUB was exercising the authority that it had been delegated by the FCC. Accordingly, the fact that Great Lakes will be required to cede the numbers it has been using in furtherance of its fraudulent traffic pumping scheme simply does not justify preventing NANPA and the Pool Administrator from meeting their obligation "to abide by the state commission's determination to reclaim numbering resources" 47 C.F.R. 52.15(i)(5) by staying the IUB Order.

Movants' arguments as to why the FCC is likely to grant their Petition for Declaratory Ruling are without foundation. Because Movants have failed to satisfy the first prong of the *Virginia Jobbers* test, their stay motion must be denied and there is no need to address the arguments advanced by Movants as to why they meet the other three prongs. Nonetheless, Sprint would like to point out that Movants are simply wrong in their belief that a stay would not harm other interested parties and that the public interest favors granting the stay. Although these fraudulent traffic pumping schemes began in Iowa, LECs in other states, *e.g.*, Minnesota, South Dakota, and Utah, have also implemented fraudulent traffic pumping schemes. Sprint has had to devote enormous resources to discover such schemes and take appropriate action so as to minimize the fraud. If the FCC were to grant the motion and stay the IUB Order which was based on extensive documentary evidence and testimony of witnesses, Sprint and other interexchange carriers ("IXCs") are likely to be the victim of even more fraudulent traffic pumping schemes, thereby forcing Sprint and other IXCs to devote even greater resources to minimize the fraud. Thus, Sprint as well as other IXCs would be harmed if the FCC were to grant the motion.

Likewise, legitimate conference calling providers that must compete with these fraudulent schemes will be harmed if the FCC attempts to intercede in the Iowa proceeding. Indeed, ZipDX LLC, which offers conferencing services based not on fraud but rather on charging its customers, *i.e.*, the cost causer, for the services it provides, has repeatedly informed the FCC of the adverse economic consequences being caused by the practices of Great Lakes and Superior and the other defendants in *Qwest v. Superior*.

Finally granting a stay is simply not in the public interest. The IUB Order exposed the fact that the defendant LECs were engaged in fraudulent practices designed to drain money from Sprint and the other IXC's and their customers. It also exposed the fact that at least one of the defendant LECs – Adventure – has been receiving USF support although it does not qualify for such support. Allowing such fraudulent practices to continue does not further the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of Sprint Communications Company L.P. was served electronically or by First Class US Mail on this 8th day of October, 2009 to the parties listed below:



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