

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

In the Matter of)	
)	
Bluegrass Telephone Company, Inc.)	
D/B/A Kentucky Telephone Company)	WC Docket No. 10-227
)	
Transmittal No. 3, FCC Tariff No. 3)	
_____)	

REPLY OF SPRINT COMMUNICATIONS COMPANY L.P.

Pursuant to the FCC’s *Public Notice* DA 10-2219 issued November 19, 2010, Sprint Communications Company L.P. (“Sprint”) hereby respectfully submits its Reply to the November 18, 2010, Response filed by Bluegrass Telephone Company d/b/a Kentucky Telephone Company, Inc. (“Bluegrass”) to Sprint’s Application seeking Commission review of the “decision” of the Wireline Competition Bureau (“Bureau”) set forth in *Public Notice* DA 10-1970 released October 14, 2010 (“*October 14 Public Notice*”), denying Sprint’s Petition to Reject or Suspend and Investigate the above-captioned tariff revisions.¹ Bluegrass has failed to rebut Sprint’s arguments and the Commission must reverse the Bureau’s decision.

¹ The *Public Notice* also denied the petition seeking rejection or suspension and investigation of Bluegrass’ tariff revisions filed by Qwest Communications Company, LLC (“Qwest”) and, like Sprint, Qwest has filed an Application for Review of the Bureau’s “decision.” Emergency Application for Review of Qwest Communications Company LLC, filed November 8, 2010. In fact, Bluegrass’ response for the most part is directed at the arguments raised by Qwest as to why the Commission must reverse the Bureau’s decision here. Sprint has no doubt that Qwest will effectively address Bluegrass’ arguments opposing Qwest’s Application for Review. And although Bluegrass mentions Sprint at several points in its Response when addressing Qwest’s arguments as if Sprint had made the same argument, Sprint’s Reply here is limited to the Bluegrass’ arguments, such as they are, made in opposition to the specific arguments in Sprint’s Application for Review.

Bluegrass claims that Sprint's Application for Review must be dismissed on procedural grounds as not being "in conformance with the Commission's Rules governing Applications for Review..." Response at 6. According to Bluegrass, Sprint did not specify which of the factor(s) set forth in 47 C.F.R. § 1.115(b)(2) warrant Commission action. Bluegrass is simply wrong.

In the second paragraph of its Application (at 1-2), Sprint disputed the Bureau's conclusion in the *October 14 Public Notice* that "neither Sprint nor Qwest presented 'compelling arguments that these transmittals are so patently unlawful as to require rejection ... [or] raise[d] significant questions of lawfulness that require investigation of the transmittals'." Sprint pointed out that "[t]he Bureau did not provide any explanation, let alone justification, as to why it came to this conclusion" and set forth the standard established by the Court in *Associated Press v FCC*, 448 F.2d 1095, 1103 (D.C. 1971) that "[a] regulatory agency 'has the power and in some cases the duty to reject a tariff that is demonstrably unlawful on its face' and 'will reject a tariff that conflicts with a statute, agency regulation or order, or with a rate fixed in a contract sanctioned by statute'." Sprint specifically cited 47 C.F.R. §1.115(b)(2)(i), of the Commission Rules, and noted the fact that "the Bureau failed to meet its statutory duty in this regard [which] constitutes reversible error."

Perhaps Bluegrass objects to the fact that Sprint identified the applicable factor from the list by citing §1.115(b)(2)(i) instead of quoting the rule, although the language Sprint quoted from the *Associated Press* decision and the language set forth in §1.115(b)(2)(i) are very similar. But there is nothing in Bluegrass' cited precedent, however, that suggests a party seeking Commission review of an action taken pursuant to delegated authority under 47 C.F.R. § 1.115 must actually quote the language of the factor warranting review.

It is hardly surprising that Bluegrass would attempt to convince the Commission to ignore the actual language set forth in Sprint's Application and dismiss the Application on procedural grounds. Bluegrass has no response to Sprint's substantive arguments. Bluegrass is openly engaged in traffic pumping, its tariff imposes charges for elements it does not provide, and it has imposed a tiered rate structure that is inappropriate in this context. The Commission should reverse the Bureau's decision that allowed Bluegrass's patently unlawful tariff to become effective.

In its Application, Sprint explained that Bluegrass was a competitive local exchange carrier ("CLEC") operating in rural Kentucky that only provides "competitive telephone services to the end users residing in or operating a business in the rural Kentucky territory where it is located as an afterthought" and in fact "generates most, if not all, of its revenue by engaging in a traffic pumping scheme." Application at 2. It is widely recognized that traffic pumping schemes are inimical to overall consumer welfare. *See, e.g.,* Connecting America: The National Broadband Plan at 142.

Bluegrass does not deny that it is engage in traffic pumping activities but disputes Sprint's observation that its provision of competitive telecommunications services in the rural areas where it claims to be operating is "an afterthought." It claims it "serve[s] a number of what Sprint might consider traditional residents and businesses in Kentucky." Response at 3, footnote 5. Moreover, it claims that "the conference calling services about which Sprint complains are end user customers operating a business in rural Kentucky [sic]." *Id.* Although Bluegrass does not provide any data or other information that would support its claims here, Sprint's own data developed from a recent analysis of its traffic terminating to Bluegrass show that residents and businesses actually resident in Bluegrass' rural Kentucky territory accounted for significantly

less than 1% of all of the traffic Sprint terminates to Bluegrass.² Clearly, such data demonstrate that Bluegrass has located its operations in rural Kentucky not to give the residents and businesses located there a competitive alternative but to “match the high switched access rates of the incumbent local exchange carrier (“ILEC”) operating in the same territory,” Sprint Application at 2, and together with its calling services partners engage in traffic pumping.

In footnote 13 of its Response (at 18), Bluegrass also disputes Sprint’s argument that “its access rates include an element for tandem switching despite the fact it did not provide such switching.” Sprint Application at 5. Bluegrass characterizes Sprint’s argument here as “unsubstantiated,” “baseless,” “unproven,” “*ipse dixit*,” “spurious” and “insufficient to meet the standard for having a non-dominant carrier tariff rejected or suspended.” Moreover it argues that regardless of whether it provides tandem switching – it only implies that it does so – it is entitled to include an element for tandem switching since, or so Bluegrass’ argument goes, its access rate for all minutes that are terminated by a so-called volume end users that exceed 500,000 minutes is far below the local switching benchmark rate – *i.e.*, the NECA Rate Band 8 access charge – which it asserts it could charge “even if [Bluegrass] only charged for local switching.”³

That Bluegrass would “pound the table” in response to Sprint’s argument here is not surprising since it has neither the facts nor the law on its side. Although Bluegrass would have the Commission believe that it provides a tandem switching function, it knows or should know, that all of the traffic it receives from Sprint for termination is sent to Bluegrass via Windstream’s access tandem pursuant to the routing instructions that Bluegrass entered into industry routing

² Based on information and belief, Bluegrass’ largest traffic pumping partner is talkee.com which is primarily engaged in providing chat line services. Talkee.com’s contact number is uses an Nevada area code.

³ The NECA Rate Band 8 access charge applies to the minutes below the 500,000 threshold.

tables. Moreover, there is no Commission precedent – and Bluegrass cites none – to support its argument that it can charge for services it does not provide as long as its rate is either at or below the benchmark rate established by the Commission. Indeed, Bluegrass’s argument is contrary to the Commission’s decisions establishing the benchmark. There the Commission made clear that the CLEC’s composite rate could only include the charges for the access elements that it provides.⁴

Finally, Bluegrass does not respond to Sprint’s point that a tiered rate structure for access is contrary to long-standing Commission policy, Sprint Application at 6, choosing, yet again, to characterize Sprint’s argument as a billing issue. In this regard, it concedes that its billing invoices would not provide the call detail that would enable Sprint and other IXC’s to determine which of the tiered rates apply to the minutes being billed. Rather, it simply argues that “the process of billing and paying for access services is necessarily a cooperative effort between LECs and IXC’s.” Response at 18, footnote 13. Such response does not address the problem caused by Bluegrass’ decision to implement a tiered rate structure for access which is contrary to Commission policy.

Sprint should not be required to seek basic information as to how Bluegrass arrived at the amounts it is billing Sprint each time it receives an invoice from Bluegrass, especially given the fact that Bluegrass could easily view such inquiries as a dispute; deny it without even providing the requested information and then launch a collection action in court which would, because of Bluegrass’ patently unreasonable provisions regarding attorneys fees, be funded by Sprint. The

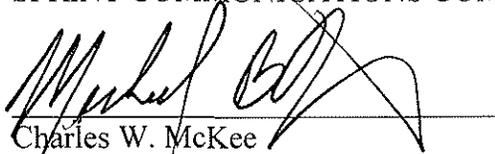
⁴ *In the Matter of Access Charge Reform*, 19 FCC Rcd 9108 at ¶ 14 (2004) (rejecting “the argument made by some competitive LECs that they should be permitted to charge the full benchmark rate when they provide any component of the interstate switched access services used in connecting an end-user to an IXC” since under this approach “rates are not tethered to the provision of particular services” which, in turn, “would be an invitation to abuse”).

likelihood that Bluegrass would engage in such practices provides ample reason for the Commission to reverse the Bureau's decision and declare the tariff revisions to be null and void.

Accordingly Sprint respectfully requests that the Commission grant its Application for Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jo-Ann Monroe, do hereby certify that a copy of the foregoing "Reply of Sprint Communications Company L.P." was served by electronic mail on this 16th day of December, 2010, to the parties listed below:

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