

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES DIVISION

FILED WITH  
Executive Secretary  
January 06, 2010  
IOWA UTILITIES BOARD

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SPRINT COMMUNICATIONS COMPANY )	Docket No. FCU-2010- <u>FCU-2010-0001</u>
L.P., )	
)	
Complainant, )	COMPLAINT and REQUEST FOR
)	EMERGENCY RELIEF
vs. )	
)	<i>(Expedited Proceeding Required</i>
IOWA TELECOMMUNICATIONS )	<i>Pursuant to Iowa Code 476.101(8))</i>
SERVICE d/b/a IOWA TELECOM, )	
)	
Respondent. )	

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Sprint Communications Company, L.P. (“Sprint”) brings this Complaint to redress improper and anticompetitive threats and practices by Iowa Telecom, *and in particular seeks emergency relief in response to Iowa Telecom’s assertion that it will discontinue traffic on January 8, 2010.*

**INTRODUCTION**

1. Sprint Communications Company, L.P. (“Sprint”) and its affiliates provide numerous services in Iowa both retail and wholesale, directly and with joint providers and partners. Sprint exchanges all of these different types of traffic with Iowa Telecom. A significant number of the minutes exchanged are initiated in Internet Protocol; these Voice over Internet Protocol (“VoIP”) calls are different in nature, are routed and handled differently, and are treated differently under regulatory regimes than traditional non-IP communications.

2. Sprint and Iowa Telecom have various rates between the companies for various types of traffic. In July 2009, Sprint determined that Iowa Telecom had been assessing traditional terminating access charges on VoIP traffic. Sprint properly disputed those charges as

permitted in Iowa Telecom's access tariffs, and withheld the disputed amounts, as contemplated by Iowa Telecom's access tariffs.

3. Iowa Telecom has now threatened that unless Sprint pays the properly withheld amounts in dispute by this Friday, January 8, 2010, Iowa Telecom will cease to provide facilities for Sprint traffic, including "the continued provision of service as well as processing new orders," in effect blocking calls to and from Iowa customers subscribing directly or indirectly to Sprint services.

4. The Board has repeatedly held that unilateral call blocking is not an appropriate way in which to resolve intercarrier disputes. Such blocking is unlawful and discriminatory under Iowa Code §§ 476.3, 476.100, and 476.101, and it not only harms Sprint by denying its rights, it also penalizes customers for their choice of Sprint services.

### **FACTUAL ALLEGATIONS**

#### **The Parties**

5. Sprint operates its wholesale/CLEC operations under an "Order in Lieu of Certificate," which authorizes Sprint to provide its telecommunications services to wholesale customers. This Order, dated March 3, 2006, guarantees to Sprint sufficient rights, privileges, and obligations of a CLEC to enable Sprint to provide wholesale services, including the right to interconnection and to obtain numbering resources. Sprint also operates under Board and FCC authority as an interexchange carrier in Iowa, and its affiliates provide commercial mobile radio services in Iowa. As in interexchange carrier Sprint delivers traffic originated by CLEC/wholesale customer end users, wireless end users and its interexchange carrier PIC, dial around and wholesale customers.

6. Iowa Telecom is the second-largest incumbent local exchange carrier in Iowa, with scores of exchanges throughout the state, where it provides voice, data, advanced services, and through partnerships, video.

**The Nature of the Underlying Dispute**

7. Sprint has become increasingly aware that VoIP providers are either not paying access charges or, Sprint believes, are reaching agreements to exchange VoIP traffic at rates below traditional access charges. Several of Sprint's carrier customers have stopped paying Sprint for such traffic, and Sprint has reason to believe that several of its competitors either do not pay such charges or have settled disputes through agreements to pay less than traditional access. To ensure competitive viability, Sprint has been forced to revisit its own position on the status of VoIP with regard to access. Sprint's position on this underlying issue is set forth in **Attachment A** (Letter to Mr. Quayle, 1/5/10).

8. Iowa Telecom's state and federal tariffs expressly contemplate the withholding of disputed amounts in a good faith dispute. For example, Iowa Telecom's Iowa intrastate access tariff, at section 2.4.1(D)(2) provides:

If the dispute is resolved in favor of the Telephone Company and the customer has withheld the disputed amount, any payments withheld pending settlement of the dispute shall be subject to the late payment charge as set forth in 2.4.1(D)(1).

If the dispute is resolved in favor of the customer and the customer has withheld the disputed amount, the customer shall be credited for each month or Portion thereof that the late payment charge as set forth in 2.4.1(D) (1) may have been applied. In the event the customer has paid the late payment charge, a credit will be granted to the customer for both the late payment charge paid on disputed amount and an amount equal to the percentage rate as set forth in 2.4.1(D)(1).

Accordingly, Sprint acted properly in accordance with Iowa Telecom's own tariff in withholding disputed amounts.

9. Because Sprint had paid, and Iowa Telecom had the benefit of, payments of disputed charges for a substantial period of time, Sprint initially recovered its overpayments from charges for types of traffic not in dispute.

10. Iowa Telecom requested information regarding how the dispute was calculated. On August 28, 2009, Sprint provided data to support its dispute and explained it was gathering additional detailed data.

11. Iowa Telecom threatened to disconnect service on January 5, 2010. As a show of good will in attempting to negotiate a resolution to this dispute, Sprint returned to paying all current charges for services not subject to dispute. Sprint also reiterated its long-standing offer to provide additional information requested by Iowa Telecom, subject to a non-disclosure agreement (“NDA”). Sprint initially provided the NDA on November 24, 2009. Not until December 23, 2009 did Iowa Telecom respond with proposed edits. Sprint has been cooperative in accepting Iowa Telecom edits to the NDA; Iowa Telecom has not yet executed it despite its assurance that it would do so the last week of 2009. Nonetheless, despite Iowa Telecom’s own delay and despite Sprint’s continued efforts to resolve this matter, Iowa Telecom has kept the clock running on its threat to discontinue services to Sprint on Friday, January 8, 2010. *See Attachment B* (series of e-mails between Regina Roach at Sprint and Gordon Quayle at Iowa Telecom dated December 21 and December 23, 2009). While the process was delayed over the holidays, Sprint had hoped continued discussions could avoid the necessity of Board action, but must now seek relief to avoid customer disruption.

**Request for Emergency Temporary and Permanent Relief**

12. It is not clear what services Iowa Telecom will discontinue, but any discontinuance will impact live and potential customers, and result in service disruptions to

customers of Sprint and Sprint's joint providers. Sprint has no reason to believe Iowa Tel will, or even can, ensure that only disputed VoIP calls will be blocked (and even if Iowa Tel could do so, it still would be unlawful). As the Board found in *Qwest and U.S. Cellular v. East Buchanan*, Dockets FCU-04-42 and FCU-04-43, such action is contrary to law and policy:

*Thus, it appears that blocking telephone calls on a carrier basis will almost always present an immediate danger to the public health, safety, or welfare, because the blocking carrier cannot promise, let alone guarantee, that it will block only nonemergency calls. The carrier cannot even offer reliable assurances that most emergency calls will be completed; that would require a call-by-call real-time analysis that is not, on this record, a realistic possibility.*

This does not mean carrier blocking is always prohibited, [footnote omitted] but it does appear to support the idea that *blocking should not be used as a means of forcing action in a commercial dispute. In this case, negotiations, complaint proceedings before the Board, arbitration (if available under federal law), and court cases, if necessary, all appear to be alternatives that will allow reasoned consideration of the disputed issues without causing unnecessary disruption of the public interest.*

*See East Buchanan*, "Order Continuing Temporary Injunction" (rel. Sept. 14, 2004)(emphasis added). Iowa Telecom has not pursued any of the alternatives to blocking set forth by the Board.

13. Sprint (or Sprint affiliates or joint providers) and Iowa Telecom are competitors in numerous industry segments. Blocking would not only be anti-competitive, it would inherently penalize customers for their choice of Sprint-provided services. Both impacts are contrary to Iowa law. *See* Iowa Code §§ 476.100(1), (5); 101(9)(c).

14. Iowa Telecom's threatened discontinuance of service is unreasonable under Iowa Code § 476.3, anti-competitive and discriminatory under Iowa Code §§ 476.100 and 101, and under *East Buchanan*, it is subject to temporary relief under Iowa Code § 17A.18A.

15. This complaint is being filed pursuant to the expedited complaint procedures established by Iowa Code § 476.101(8) for resolution of complaints involving violations which include violations of Iowa Code § 476.101(9), a covered section. Moreover, because customers

will be inconvenienced (and because the customer being dialed may be a family member or even a health services provider and therefore safety and welfare is being compromised as the Board noted in the *East Buchanan* case), the Board should require Iowa Telecom to withdraw its threat of disconnection and provide assurance of continued service, and require Iowa Telecom to resolve the underlying dispute either at the negotiating table with Sprint, or through formal dispute resolution before an appropriate agency or court.

Respectfully submitted this 6<sup>th</sup> day of January, 2010.

/s/ Bret A. Dublinske

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ATTORNEYS FOR  
SPRINT COMMUNICATIONS COMPANY, LP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 6, 2010, he had electronically filed the foregoing document with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the following:

Office of the Consumer Advocate  
310 Maple Street  
Des Moines, IA 50319

Edward B. Krachmer  
Iowa Telecom  
403 W. 4th St. N.  
Newton, IA 50208  
[edk@IowaTelecom.com](mailto:edk@IowaTelecom.com)

The undersigned further hereby certifies that he had a copy of the foregoing mailed to the person(s) listed below at the address(es) indicated, stamped with the appropriate postage for ordinary mail and deposited this 6<sup>th</sup> day of January, 2010, in a United States mail receptacle, in Des Moines, Iowa; he further certifies that he had a copy of the foregoing alternatively served via electronic mail at the addresses below on the aforementioned date.

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/s/Bret A. Dublinske  
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