



PUBLIC NOTICE

Federal Communications Commission
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DA 04-943
April 2, 2004

Parties Asked To Update Record Regarding Petition For Declaratory Ruling On Interexchange Carrier “Rounding-Up” Practices

CCB/CPD File No. 98-30

COMMENTS DUE: 30 days after Federal Register publication of this Notice
REPLY COMMENTS DUE: 45 days after Federal Register publication of this Notice

The Wireline Competition Bureau (the Bureau) invites interested parties to update the record pertaining to the petition for declaratory ruling filed by Connie L. Smith (Petitioner) on March 30, 1998. The Petitioner asked for a declaratory ruling that Sprint Communications Company, L.P. (Sprint) violated the Communications Act by failing to expressly disclose its alleged “rounding-up” practices in its tariff filed with this Commission and/or that Sprint has otherwise failed to adequately disclose its billing practices.

The petition stems from a federal district court class action brought by Petitioner against Sprint on June 5, 1996 in the United States District Court for the Northern District of California.¹ Petitioner’s complaint in the court proceeding accused Sprint of rounding-up the length of telephone calls to the next full minute, thus billing its customers for an entire minute even when only a fraction of a minute is actually used, without disclosing this practice in its marketing materials, advertisements, phone bills or general business correspondence. The Petitioner asserted that the alleged practice constitutes a cause of action under common law and California law.

In its September 13, 1996 decision, the district court dismissed all of the claims presented by the Petitioner except for the claims for injunctive relief under the Consumers Legal Remedies Act and California Civil Code with respect to interstate long-distance service. Specifically, the Petitioner claimed that Sprint engaged in false advertising and unlawful business practices under state law by filing a tariff with the Commission for its interstate residential long-distance service without expressly disclosing that it rounds up to the next full minute. The court found that the

¹ See *Smith v. Sprint Communications Company, L.P.*, No. C 96-2067 FMS, 1996 WL 1058204 (N.D. Cal. Sept. 13, 1996) (*Smith v. Sprint*).

Communications Act requires disclosure of carrier billing practices in filed tariffs but was unable to determine whether Sprint's tariff adequately disclosed its billing practices. The court concluded that whether Sprint should have expressly stated in its tariff that it rounds up is a question the Commission would need to address in light of its regulations under the Communications Act. Therefore, relying on the doctrine of primary jurisdiction, the court stayed a decision on Petitioner's claims with respect to interstate residential long-distance service pending referral of the disclosure issue to the Commission. Petitioner subsequently filed the petition for declaratory ruling with the Commission on March 30, 1998 and on May 18, 1998, the Bureau issued a public notice seeking comment on the petition.²

In a decision issued on December 27, 1999, the district court dismissed Petitioner's case in its entirety for lack of subject matter jurisdiction. The court found that Petitioner's claims arose under state law, not federal law, and that the case should have been brought in state court. Based on this finding, the court stated that there was no longer any point in staying the case.³

Because the court has dismissed the underlying litigation, it appears that there no longer is any need for the Commission to respond to the primary jurisdiction referral. Similarly, the question raised by the petition for declaratory ruling, *i.e.*, what constitutes proper disclosure under section 203 of the Communications Act, may have become moot or irrelevant. Because the Petitioner does not appear to have pursued the matter further before the Commission since the court dismissed the litigation, it is not clear if there are any outstanding issues for the Commission to address.

For these reasons, the Bureau requests that interested parties now file a supplemental notice indicating those issues that they still wish to be considered. In addition, parties may refresh the record with any new information or arguments that they believe to be relevant to deciding such issues. To the extent parties do not indicate an intent to pursue the issues delineated in the petition for declaratory ruling, the Commission will deem the petition withdrawn and will dismiss it.

Interested parties may file comments updating the record in this proceeding no later than **30 days after this Public Notice appears in the Federal Register**, with the Secretary, FCC at 445 12th Street, SW, TW-A325, Washington, DC 20554. Oppositions or responses to these comments may be filed with the Secretary, FCC no later than **45 days after this Public Notice appears in the Federal Register**. This is a non-docketed proceeding. Therefore, interested parties have to file pleadings by paper because electronic filing on the Commission's Electronic Comment Filing System (ECFS) is not available in non-docketed proceedings. When filing

² See Public Notice, Petition for Declaratory Ruling of Connie L. Smith, DA 98-945 (rel. May 18, 1998). The Commission received comments from the Vermont Public Service Board (June 12, 1998) and Sprint (June 17, 1998). The Petitioner filed a reply on July 1, 1998.

³ See *Smith v. Sprint Communications Company, L.P.*, No. C 96-2067 WHA, 1999 WL 1285445 (N.D. Cal. Dec. 27, 1999).

comments and reply comments, parties should reference internal file number CCB/CPD File No. 98-30.

Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

- The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW, Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St. SW, Suite TW-A325, Washington, DC 20554.

Two (2) copies of the comments and reply comments should also be sent to Steve Morris, Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-A121, Washington, D.C. 20554. Parties shall also serve one copy with Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 863-2893, or via email to <qualexint@aol.com>.

The original petition for declaratory ruling filed by the Petitioner in CCB/CPD File No. 98-30 is available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863-2893, facsimile (202) 863-2898.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two- sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

For further information, contact David Hu, Pricing Policy Division, Wireline Competition Bureau, (202) 418-1520.

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