

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
GS Texas Ventures, LLC) WCB/Pricing File No. 14-2
Tariff F.C.C. No. 1) Transmittal No. 1

ORDER

Adopted: September 8, 2014

Released: September 8, 2014

By the Acting Chief, Pricing Policy Division:

I. INTRODUCTION

1. On August 25, 2014, GS Texas Ventures, LLC (GS Texas Ventures) filed Tariff F.C.C. No. 1, a proposed tariff for "the regulations, rates and charges applying to the provision of interstate Access Services supplied to Buyers for the origination and termination of traffic to and from Central Office codes assigned to GS Texas Ventures, LLC." The proposed tariff is scheduled to become effective on September 9, 2014. Because the proposed tariff prohibits purchasers from obtaining Commission review of the tariff via the formal complaint process and violates the prohibition on call blocking contained in the Commission's orders and the Communications Act of 1934, as amended (Act), we reject Transmittal No. 1 as patently unlawful, in violation of sections 201 and 208 of the Communications Act.

II. BACKGROUND

2. GS Texas Ventures filed the above-referenced proposed tariff on August 25, 2014, to become effective on September 9, 2014. On September 2, 2014, Sprint Communications Company, L.P. (Sprint), CenturyLink Communications, LLC (CenturyLink), and Level 3 Communications, LLC (Level 3) (together, the "Petitioners") filed a petition to reject, or in the alternative, suspend and investigate the proposed GS Texas Ventures tariff filing. The Petitioners assert that the GS Texas Ventures tariff is unlawful because it contains an arbitration provision that "attempt[s] to circumvent the Commission's review of the lawfulness of the tariff" and "seeks to impose an obligation on interexchange carriers . . . to

1 GS Texas Ventures, LLC Tariff F.C.C. No. 1, Application of Tariff (filed Aug. 25, 2014) (Tariff); see Letter from Patrick Phipps, QSI Consulting, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, Transmittal No. 1 (filed Aug. 25, 2014) (Transmittal Letter).

2 Transmittal Letter.

3 See infra note 20.

4 47 U.S.C. § 201(b), 208.

5 Transmittal Letter.

6 Petition of Sprint, CenturyLink, and Level 3 to Reject or to Suspend and Investigate (filed Sept. 2, 2014) (Petition).

7 Petitioners contend that the arbitration provision at issue would "preclude those companies that [GS Texas

violate federal law by requiring them to illegally block telephone calls if the purchaser does not consent to the terms of the tariff.”⁸

3. Section 2.10 of the proposed tariff sets forth the rules and regulations governing billing and payment for service. With respect to disputed charges, the proposed tariff states, in relevant part:

All disputes between the Company and Buyer or Customer related to rates, terms and/or conditions (including collection of past due amounts) for services provided pursuant to this tariff, that cannot be settled through negotiation, shall be resolved by arbitration upon written demand of either party The arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing Party’s actual or compensatory damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this tariff.⁹

Section 2.13 of the proposed tariff discusses cancellation of service by the purchasers of GS Texas Ventures’ access services, and states that:

Buyers seeking to cancel Service have an affirmative obligation to block traffic originating from or terminating to the Company’s Network. By originating traffic from or terminating traffic to the Company’s Network, the Buyer will have constructively ordered the Company’s Switched Access Service.¹⁰

III. DISCUSSION

4. The Commission may reject a tariff filed by a carrier if the filing is “so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket.”¹¹ The United States Court of Appeals for the District of Columbia Circuit has explained that the Commission has “the power and in some cases the duty” to reject a tariff that is demonstrably unlawful on its face, or that conflicts with a statute, agency regulation or order.¹² Under this standard, we reject Transmittal No. 1 because the proposed tariff violates section 201(b) and section 208 of the Act, as well as the Commission’s orders that prevent carrier call blocking practices.

5. Pursuant to the Act, the Commission has the authority to review tariffs that have been filed to ensure their compliance with the Act or a rule or order of the Commission,¹³ including the section 201(b) mandate that “[a]ll charges, practices, classifications, and regulations for and in connection with [a] communications service, shall be just and reasonable.”¹⁴ Section 208(a) of the Act authorizes complaints by any person “complaining of anything done or omitted to be done by any common carrier

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Ventures] claims are purchasers of services under the tariff . . . from invoking their statutory rights under Title II of the Communications Act” and “seeks to deprive the Commission of its essential role under Sections 201 and 203.” Petition at 1.

⁸ *Id.*

⁹ Tariff at Section 2.10.4.I.

¹⁰ Tariff at Section 2.13.1.B.

¹¹ *Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971); *cert denied*, 405 U.S. 989 (1972); *see also Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *American Broadcasting Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

¹² *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971).

¹³ 47 U.S.C. § 204.

¹⁴ 47 U.S.C. § 201(b).

subject to the provisions of the Act,”¹⁵ and under section 208, a party may obtain equitable relief or recover damages if it can establish that a carrier-initiated tariff violates the Act or a rule or order of the Commission.¹⁶ Thus, even LEC tariffs that take effect on seven or 15 days’ notice and are “deemed lawful” may be subsequently challenged at the Commission through the section 208 complaint process.¹⁷

6. Section 2.10.4.I of GS Texas Ventures’ proposed tariff contains a provision mandating that all disputes relating to rates, terms, and conditions be resolved through arbitration, and further limits the arbitrator to prescribe only those remedies that are consistent with the tariff.¹⁸ We agree with Petitioners that, as written and if enforceable, this language would preclude parties from challenging the tariff at the Commission as contemplated by the section 208 complaint process. Rather, once the proposed tariff has become effective and attained “deemed lawful” status, it purports to limit parties to challenging its terms solely through arbitration, without the ability to obtain independent review of the tariff’s lawfulness by the Commission, including the full range of remedies available to the Commission under the Act.¹⁹ In light of our finding that the arbitration requirement contained in the proposed tariff conflicts with section 208, we further find that GS Texas Ventures’ inclusion of section 2.10.4.I in its proposed tariff is unjust and unreasonable under Section 201(b) of the Act. Thus, section 2.10.4.I is unlawful under section 201(b) and section 208 of the Act.

7. The Commission generally has established that call blocking is an unjust and unreasonable practice under section 201(b) of the Act, and that, in some instances, the practice may violate a carrier’s duty under section 202 of the Act to refrain from unjust or unreasonable discrimination in practices, facilities, or services.²⁰ As such, no carrier may block, choke, reduce, or restrict traffic in any way, including to avoid paying transport and termination charges.²¹ In this instance, section 2.13.1.B of GS Texas Ventures’ proposed tariff directs purchasers seeking to cancel service under the tariff to block any traffic originating from or terminating to GS Texas Ventures’ network.²² As set forth above, it is

¹⁵ 47 U.S.C. § 208(a).

¹⁶ See, e.g., *Bell Atlantic Telephone Companies Tariff F.C.C. No. 1 Application for Review*, Transmittal Nos. 185 and 204, Memorandum Opinion and Order, 8 FCC Rcd 2732, 2733 n.8 (1993).

¹⁷ See *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Order, CC Docket No. 96-187, 12 FCC Rcd 2170, 2175-76, 2180-84, paras. 18-23 (1997).

¹⁸ See Tariff at Section 2.10.4.I.

¹⁹ Tariffs that are lawful at the time that they are filed may subsequently become unlawful based on particular circumstances. For example, as the Petitioners observe, the tariff filings of a competitive local exchange carrier (CLEC) could become void if the CLEC engages in access stimulation and exceeds the benchmarked rate. Petition at 5, 7; see 47 C.F.R. § 61.26(g).

²⁰ *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16155-56, 16169, Paras. 3, 29 (2013) (*Rural Call Completion Order*); *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012) (noting that it may be a violation of section 202 to provide discriminatory service with respect to calls placed to rural areas) (2012 Declaratory Ruling); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18028-29, para. 973 (2011) (*USF/ICC Transformation Order*), *pets. For review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. May 23, 2014); *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling, 22 FCC Rcd 11629 (Wireline Comp. Bur. 2007) (2007 Declaratory Ruling).

²¹ *Rural Call Completion Order*, 28 FCC Rcd at 16169, para. 29; *2012 Declaratory Ruling*, 27 FCC Rcd at 1352, paras. 3-4; *2007 Declaratory Ruling*, 22 FCC Rcd at 11631-32, paras. 6-7. In the *USF/ICC Transformation Order*, the Commission extended its longstanding prohibition on call blocking to providers of interconnected and one-way VoIP service. *USF/ICC Transformation Order*, 26 FCC Rcd at 18028-29, paras. 973-74.

²² See Tariff at Section 2.13.1.B.

generally impermissible for carriers to block originating or terminating traffic, and carriers employing this practice would likely violate section 201(b) of the Act and the Commission's call blocking orders.²³ While the Commission has allowed call blocking "under rare and limited circumstances,"²⁴ the tariff requirement would apply regardless of whether such circumstances are present. Accordingly, section 2.13.1.B of the proposed tariff is unlawful under section 201(b) of the Act.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201(b), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201(b), and 208, and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the proposed GS Texas Ventures, LLC Tariff F.C.C. No. 1 contained in Transmittal No. 1 IS HEREBY REJECTED;

9. IT IS FURTHER ORDERED that, pursuant to section 61.69 of the Commission's rules, 47 C.F.R. § 61.69, GS Texas Ventures, LLC SHALL FILE a supplement within five business days from the release date of this order noting that this proposed tariff was rejected in its entirety by the Federal Communications Commission.

10. IT IS FURTHER ORDERED that, the Petition of Sprint, CenturyLink, and Level 3 to Reject or to Suspend and Investigate the proposed GS Texas Ventures, LLC FCC Tariff No. 1 contained in Transmittal No. 1 is GRANTED as indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk
Acting Chief, Pricing Policy Division
Wireline Competition Bureau

²³ While there may be ambiguity in how purchasers would apply the language of Section 2.10.4.I to avoid constructive ordering, we find that, on its face, the call blocking language in Section 2.10.4.I is unambiguous and therefore unlawful.

²⁴ *Policies and Rules Concerning Operator Services; Amendment of Policies and Rules Concerning Operator Service Providers and Aggregators; Petition for Declaratory Ruling of Securus Technologies, Inc.*, CC Docket Nos. 90-313 and 94-158, WC Docket No. 09-144, Declaratory Ruling and Order, 28 FCC Rcd 13913, 13917, para. 9 & n.33 (Wireline Comp. Bur. 2013) (noting that, for example, the Commission previously concluded that it was reasonable for AT&T to block calls to a chat line that was engaged in an arbitrage scheme with a competitive access provider to artificially inflate the access fees charged to AT&T). Additionally, the prohibition on call blocking has "no effect on the right of individual end users to choose to block incoming calls from unwanted callers." 2007 *Declaratory Ruling*, 22 FCC Rcd at 11632 n. 21.