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February 1, 2010

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PUBLIC SERVICE
COMMISSION

via Hand Delivery

Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

Re: *In the Matter of: Complaint of Sprint Communications Company, L.P. Against Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone Company for the Unlawful Imposition of Access Charges., Case No. 2010-00012*

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of the Answer and Counterclaim filed on behalf of Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone Company in the above-referenced case. Please file-stamp one copy, and return it to our courier.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

Holly C. Wallace

cc: All Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

IN THE MATTER OF:

COMPLAINT OF SPRINT COMMUNICATIONS
COMPANY, L.P. AGAINST BLUEGRASS
TELEPHONE COMPANY, INC. d/b/a
KENTUCKY TELEPHONE COMPANY FOR THE
UNLAWFUL IMPOSITION OF ACCESS CHARGES

FEB 01 2010

PUBLIC SERVICE
COMMISSION
Case No. 2010-00012

ANSWER AND COUNTERCLAIM

Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone Company ("Kentucky Telephone"), by counsel, and pursuant to 807 KAR 5:001, §12, and the January 22, 2010 Order of the Kentucky Public Service Commission (the "Commission"), states as follows for its Answer and Counterclaim to the Complaint of Sprint Communications Company, L.P. ("Sprint") against Kentucky Telephone and Request for Expedited Relief ("Complaint").

1. Kentucky Telephone admits the allegations in paragraph 1 of the Complaint.
2. Kentucky Telephone denies that it has improperly billed Sprint terminating intrastate switched access charges. Kentucky Telephone states that its intrastate switched access tariff applies to the traffic subject to Sprint's Complaint. Kentucky Telephone is without knowledge sufficient to form a belief as to the truth or veracity of the remaining allegations of paragraph 2 of the Complaint and therefore denies same. Kentucky Telephone states further that Sprint is not entitled to the relief requested.
3. Kentucky Telephone admits the allegations in paragraph 3 of the Complaint.
4. Kentucky Telephone admits the allegations in paragraph 4 of the Complaint.
5. Kentucky Telephone admits that Russell D. Lukas of Lukas, Nace Gutierrez and Sachs of McLean, Virginia was Kentucky Telephone's primary legal representative with regard to negotiations between Kentucky Telephone and Sprint prior to Sprint filing its Complaint on January

6, 2010. Kentucky Telephone states further that its legal representatives in this proceeding are the following:

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Edward T. Depp
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6. In response to the allegations contained in paragraph 6 of the Complaint, Kentucky Telephone states that KRS 278.040 speaks for itself. Kentucky Telephone denies any allegation inconsistent with the statute.

7. In response to the allegations contained in paragraph 7 of the Complaint, Kentucky Telephone states that KRS 278.260 speaks for itself. Kentucky Telephone denies any allegation inconsistent with the statute.

8. In response to the allegations contained in paragraph 8 of the Complaint, Kentucky Telephone states that KRS 278.030(1) speaks for itself. Kentucky Telephone denies any allegation inconsistent with the statute.

9. In response to the allegations in paragraph 9 of the Complaint, Kentucky Telephone states that KRS 278.030(2) speaks for itself. Kentucky Telephone denies any allegation inconsistent with the statute.

10. Kentucky Telephone states that the allegations in paragraph 10 of the Complaint are legal conclusions that require no response. Kentucky Telephone states further that KRS 278.030 speaks for itself. Kentucky Telephone denies any allegation inconsistent with the statute.

11. Kentucky Telephone states that the allegations contained in paragraph 11 of the Complaint are legal conclusions that require no response. Kentucky Telephone states further that KRS 278.160 and the case of *Cincinnati Bell Telephone Company v. Kentucky Public Service Commission*, 223 S.W.3d 829 (Ky. App. 2007) speak for themselves. Kentucky Telephone denies any allegation inconsistent with the statute and/or case.

12. Kentucky Telephone is without sufficient information to determine the truth or veracity of the allegations of paragraph 12 of the Complaint and therefore denies same. Kentucky Telephone states further that it provides local exchange service and switched access services in accordance with its tariffs. Kentucky Telephone denies all remaining allegations in paragraph 12 of the Complaint.

13. Kentucky Telephone denies the allegations in paragraph 13 of the Complaint.

14. Kentucky Telephone admits that the telephone number (270) 200-2775 is a Kentucky Telephone number. Kentucky Telephone is without information sufficient to form a belief as to the truth or veracity of the remaining allegations in paragraph 14 of the Complaint and therefore denies same.

15. Kentucky Telephone states that the Iowa Utilities Board decision attached as Exhibit B to the Complaint speaks for itself. Kentucky Telephone states further that any decision by the Iowa Utilities Board is not binding on the Commission, and that the Board's decision was based on the facts before it. Kentucky Telephone further states that it denies the allegation that LECs do not provide switched access services to interexchange carriers ("IXCs") for calls delivered to "call connection companies." Kentucky Telephone denies all remaining allegations in paragraph 15 of the Complaint.

16. Kentucky Telephone states that the FCC's decision in *In the matter of Qwest Communications Corp. v. Farmers and Merchant's Mutual Telephone Company*, File No. EB-07-MD-001, Second Order on Reconsideration (November 25, 2009), speaks for itself, and that the decision was based on the facts before the FCC. Kentucky Telephone denies any allegations that are inconsistent with that decision.

17. Kentucky Telephone denies the allegations in paragraph 17 of the Complaint.

18. Kentucky Telephone is without information sufficient to form a belief as to when Sprint received the bill for switched access services for the time period of September 1, 2009 through September 30, 2009. Kentucky Telephone admits it billed Sprint for that time period and that the bill included charges for intrastate switched access services. Kentucky Telephone denies any remaining allegations in paragraph 18 of the Complaint.

19. Kentucky Telephone admits that Sprint has contested the October, November and December bills for switched access charges. Kentucky Telephone admits further that each of the bills was for the preceding calendar month time period. Kentucky Telephone denies the remaining allegations in paragraph 19 of the Complaint.

20. Kentucky Telephone denies the allegations in paragraph 20 of the Complaint.

21. Kentucky Telephone admits that it activated a website regarding Sprint's refusal to pay lawfully-billed access charges. Kentucky Telephone denies that the purpose of the website was to warn Sprint.

22. Kentucky Telephone admits that it sent an email to Sprint on or about November 18, 2009 regarding an intercept message and disconnecting trunks. Kentucky Telephone states that it did not intercept calls from Sprint customers and it did not disconnect trunks. Kentucky Telephone denies the remaining allegations in paragraph 22 of the Complaint.

23. Kentucky Telephone admits that it sent the email, referenced in paragraph 22 of the Complaint, to Sprint. Kentucky Telephone admits that the email contains a statement regarding Sprint being tried in the court of public opinion. Kentucky Telephone denies that it sent the email to harass Sprint. Kentucky Telephone is without knowledge sufficient to form a belief as to the truth or veracity of the remaining allegations in paragraph 23 of the Complaint and therefore denies same.

24. Kentucky Telephone admits that it acknowledged the Iowa Utilities Board's decision, and advised Sprint representatives that Kentucky Telephone's situation is different. Kentucky Telephone denies the remaining allegations in paragraph 24 of the Complaint.

25. Kentucky Telephone admits that Sprint sent it a letter dated November 25, 2009 regarding Kentucky Telephone's October and November, 2009 bills to Sprint for switched access services. Kentucky Telephone states that the letter speaks for itself. Kentucky Telephone denies any remaining allegations in paragraph 25 of the Complaint.

26. Kentucky Telephone admits that its counsel sent a letter dated December 10, 2009 to Sprint. Kentucky Telephone states that the letter speaks for itself. Kentucky Telephone admits that it did not provide Sprint with the information it requested in its letter dated November 25, 2009. Kentucky Telephone states that Sprint sought confidential information, and customer proprietary network information of some of Kentucky Telephone's end users, including copies of bills issued to those end users. Kentucky Telephone properly declined to provide that information to Sprint. Kentucky Telephone denies any remaining allegations in paragraph 26 of the Complaint.

27. Kentucky Telephone states that the December 10, 2009 letter from its counsel to Sprint speaks for itself. Kentucky Telephone denies any allegations that are inconsistent with the letter.

28. Kentucky Telephone is without information sufficient to form a belief as to the truth or veracity of Sprint's allegations in paragraph 28 of the Complaint regarding what it is seeking by filing its Complaint, and therefore denies same. Kentucky Telephone states further that it has not improperly billed Sprint pursuant to its intrastate switched access tariff, KY PSC Tariff No. 3. Kentucky Telephone denies all remaining allegations in paragraph 28 of the Complaint.

29. Kentucky Telephone is without information sufficient to form a belief as to the truth or veracity of the allegations in paragraph 29 of the Complaint and therefore denies same. Kentucky Telephone states further that it provides intrastate switched access services to Sprint and that it has properly billed Sprint for such services pursuant to its KY PSC Tariff No. 3.

30. Kentucky Telephone is without information sufficient to form a belief as to the truth or veracity of the allegations in paragraph 30 and therefore denies same. Kentucky Telephone states that it properly provides local exchange service to its end users pursuant to its local exchange services tariff. Kentucky Telephone denies any and all remaining allegations in paragraph 30 of the Complaint.

31. Kentucky Telephone is without information sufficient to form a belief as to the truth or veracity of the allegations contained in the first sentence of paragraph 31 of the Complaint and therefore denies same. Kentucky Telephone states that its KY PSC Tariff No. 3, and that 807 KAR 5:006 (14)(1) speak for themselves. Kentucky Telephone admits that Sprint has contested some charges and admits that Sprint requested an in-depth review in its November 25, 2009 letter. Kentucky Telephone states that the remaining allegations in paragraph 31 of the Complaint are legal conclusions that do not require a response and therefore are denied. Kentucky Telephone states further that it will comply with the Commission's January 22, 2010 order in this case and not terminate service to Sprint during the pendency of this Complaint.

32. Kentucky Telephone states that the Commission's August 26, 2009 Order in *In the matter of Investigation into Traffic Dispute Between Brandenburg Telephone Company, Windstream Kentucky East and Verizon Access*, Case No. 2008-00203 speaks for itself. Kentucky Telephone denies any allegations in paragraph 32 of the Complaint that are inconsistent with that Order.

33. Kentucky Telephone denies that its actions constitute unjust and unreasonable conduct. Kentucky Telephone denies the remaining allegations in paragraph 33 of the Complaint.

34. Kentucky Telephone is without information sufficient to form a belief as to the truth or veracity of the allegations in paragraph 34 of the Complaint and therefore denies same. Kentucky Telephone states, however, that Sprint's request in paragraph 34 of the Complaint, if granted by the Commission, would impair the parties' ability to engage in settlement discussions.

35. Kentucky Telephone denies that Sprint is entitled to the relief requested or any relief whatsoever.

36. Kentucky Telephone denies any and all allegations in the Complaint that are not specifically admitted herein.

AFFIRMATIVE DEFENSES

37. The Complaint fails to state a claim upon which relief can be granted.

38. Kentucky Telephone is charging Sprint consistent with the terms of its KY PSC Tariff No. 3.

39. Sprint's claims relate, at least in part, to charges not properly disputed pursuant to the terms of Kentucky Telephone's KY PSC Tariff No. 3.

40. Sprint's claims are barred by the doctrine of estoppel.

41. Sprint has failed to mitigate its alleged damages.

42. Sprint's claims may be barred by applicable Kentucky Administrative Regulations.

43. Sprint's claims are barred by applicable tariffs.
44. Sprint's claims are barred by the doctrine of accord and satisfaction.

WHEREFORE, Kentucky Telephone respectfully requests that the Commission take the following actions:

- a. Dismiss Sprint's Complaint against Kentucky Telephone with prejudice;
- b. Order Sprint to pay the full amount of its outstanding balance for intrastate switched access services provided by Kentucky Telephone;
- c. Grant Kentucky Telephone any and all other legal and equitable relief to which it may be entitled.

COUNTERCLAIM

Bluegrass Telephone Company d/b/a Kentucky Telephone Company ("Kentucky Telephone"), by counsel, and for its counterclaim against Sprint Communications Company, L.P. ("Sprint"), hereby states as follows.

1. Pursuant to KRS 278.040, the Kentucky Public Service Commission (the "Commission") has exclusive jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

2. Pursuant to KRS 278.260, the Commission is vested with original jurisdiction over "complaints as to rates or service of any utility" and is empowered to investigate and remedy such complaint.

3. Pursuant to KRS 278.030(1), "[e]very utility may demand, collect and receive fair, just, and reasonable rates for the services rendered, or to be rendered by it to any person."

Subsection 3 of KRS 278.030 allows a utility to "employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates."

4. Kentucky Telephone incorporates by reference the admissions and denials contained in its Answer and Affirmative Defenses.

5. Kentucky Telephone provides intrastate switched access services to Sprint.

6. Kentucky Telephone provides intrastate switched access services to Sprint in accordance with the provisions of its KY PSC Tariff No. 3.

7. Sprint has failed and continues to fail to pay Kentucky Telephone for intrastate switched access services properly billed to Sprint in accordance with Kentucky Telephone's KY PSC Tariff No. 3.

8. KY PSC Tariff No. 3 provides that it "applies to intrastate access service supplied to Customers for origination and termination of traffic to and from Central Office codes directly assigned to Bluegrass Telephone Company, Inc." (KY PSC Tariff No. 3, original page 11.)

9. Intrastate access service is defined within the tariff as follows: "Provides for a two-point communications path between a Customer's premises or a collocated interconnection location and an end-user's premises for originating and terminating calls within the state. (KY PSC Tariff No. 3, original page 7.) Customer is defined within the tariff as "[t]he person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations." (*Id.*) End user is defined as "[a]ny person or entity that obtains the Company's services provided under this Tariff, regardless of whether such person or entity is so authorized by the Customer." (*Id.*)

10. Section 2.6.1 of Kentucky Telephone's access tariff provides that "[t]he Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer. (KY PSC Tariff No. 3.)

11. Section 2.6.2 of Kentucky Telephone's access tariff provides, "[t]he Customer is responsible for payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company." (KY PSC Tariff No. 3.)

12. Section 2.6.2 (E) of Kentucky Telephone's access tariff provides that "[i]f any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, multiplied by a late factor. The late factor shall be the lesser of: (1) a rate of 1.5% per month; or (2) the highest interest rate which may be applied under state law for commercial transactions." (KY PSC Tariff No. 3.)

13. Section 2.6.3(B)(1) provides that "[t]he undisputed portions of the bill must be paid by the payment due date to avoid assessment of a late payment charge on the undisputed amount under Section 2.6.2(E), preceding." The tariff provides further that "[i]n the event that a billing dispute is resolved in favor of the Company, the Customer shall pay the late payment charge." (KY PSC Tariff No. 3, §2.6.3(B)(3).)

14. Kentucky Telephone bills Sprint for intrastate switched access services pursuant to and in accordance with the terms of Kentucky Telephone's intrastate switched access tariff, KY PSC Tariff No. 3.

15. Sprint has not paid any of the charges for intrastate switched access services billed by Kentucky Telephone in the October 2009, November 2009, December 2009, and January 2010 access bills. Sprint's underpayments total \$752.92.

16. In accordance with Commission regulations and the terms of Kentucky Telephone's intrastate switched access tariff, Kentucky Telephone has the right to terminate the provision of service to Sprint for Sprint's nonpayment of intrastate switched access service charges.

17. As of the date of the filing of this Counterclaim, Sprint owes Kentucky Telephone approximately \$752.92 for intrastate switched access services provided pursuant to Kentucky Telephone's intrastate switched access tariff, KY PSC Tariff No. 3.

WHEREFORE, Kentucky Telephone respectfully requests that the Commission take the following actions:

a. Order Sprint to pay the full amount of its outstanding balance (at the time the Commission enters such order) for intrastate switched access services provided by Kentucky Telephone;

b. On a prospective basis, order Sprint to abide by the Kentucky Telephone intrastate switched access tariff and timely remit payment for all switched access service charges to Kentucky Telephone;

c. Permit Kentucky Telephone to disconnect service to Sprint if Sprint fails to pay the full amount of its outstanding balance for switched access services provided by Kentucky Telephone or fails to abide by the Kentucky Telephone intrastate switched access tariff; and

d. Grant Kentucky Telephone any and all other legal and equitable relief to which it may be entitled.

Respectfully submitted,



John E. Selent

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Edward T. Depp

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Counsel to Kentucky Telephone Company

CERTIFICATE OF SERVICE

I hereby certify that an accurate copy of the foregoing was served via United States first-class mail, postage prepaid, on this 1st day of February, 2010 to:

John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Phillip R. Schenkenberg
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Counsel to Kentucky Telephone Company