

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COMPLAINT OF SPRINT COMMUNICATIONS)	
COMPANY LP AGAINST BRANDENBURG)	CASE NO.
TELEPHONE COMPANY AND REQUEST FOR)	2008-00135
EXPEDITED RELIEF)	

O R D E R

On April 10, 2008, Sprint Communications Company LP (“Sprint”) filed a formal complaint against Brandenburg Telephone Company (“Brandenburg”) for the alleged unlawful imposition of access charges. Brandenburg filed its response and counterclaim on April 25, 2008, pursuant to the Commission’s Order to satisfy or answer the allegations. On May 5, 2008, Sprint filed its response to Brandenburg’s counterclaim.

On July 17 2008, the parties met with Commission Staff at an informal conference. Following the conference, the Commission issued an Order on August 1, 2008 directing the parties to file simultaneous data requests and to file with the Commission updates on the status of negotiations between the two parties.

On February 2, 2009, Brandenburg filed with the Commission an Emergency Motion to Compel Payment of Access Charges from Sprint. In its motion, Brandenburg asserts that Sprint is not paying approximately \$370,976 in undisputed access charges.¹ Brandenburg argues that the amount of arrearage is problematic because of

¹ Emergency Motion to Compel Payment of Access Charges at 1.

Sprint's precarious financial condition and the financial strain the arrearage puts on Brandenburg.²

Sprint, in response to Brandenburg's Motion to Compel Payment of Access Charges, argues that it has paid all undisputed charges and has also paid a majority of the disputed access charges.³ Sprint asserts that, as of February 12, 2009, the total amount in dispute is \$1,949,234.14, of which Sprint has paid \$1,329,238 to Brandenburg, which results in Sprint's customer account with Brandenburg being current and allows Sprint to comply with 807 KAR 5:006, Section 11.⁴ Sprint also argues that the Commission is not the proper forum to collect unpaid balances and points out that Brandenburg has filed a complaint in Meade Circuit Court⁵ to seek recovery of the alleged unpaid balances.⁶

Brandenburg, in its reply to Sprint's response to Brandenburg's Motion to Compel, asserts that Sprint's withholding payment of undisputed charges was an "unlawful set-off" even if Sprint believed it had overpaid for the disputed charges.⁷ Brandenburg also asserts that Brandenburg's tariff does not provide for such set-offs.⁸

² Id. at 2-3.

³ Sprint's Response to Brandenburg's Emergency Motion to Compel Payment of Access Charges at 1.

⁴ Id. at 1-2.

⁵ On February 25, 2009, Sprint removed this action from Meade Circuit Court to the United States District Court for the Western District of Kentucky and the action is docketed as Case No. 09-CV-00109.

⁶ Id. at 3.

⁷ Brandenburg's Reply to Sprint's Opposition to Brandenburg's Motion to Compel Payment at 2.

⁸ Id. at 6-8.

Brandenburg argues that to accept Sprint's argument would require "the Commission to first assume that Sprint has been overbilled . . ." which is the central issue of the complaint case.⁹

On February 3, 2009, Sprint and Brandenburg filed their respective status reports with the Commission. Sprint states that it "believes it is unlikely the parties will be able to reach a settlement."¹⁰ Brandenburg, in its status report, echoes Sprint and states that "it appears unlikely that the parties will be able to resolve this matter without the Commission's intervention."¹¹ Both parties requested that the Commission hold a formal hearing.

On February 18, 2009, Brandenburg filed with the Commission a letter informing the Commission that Brandenburg had notified Sprint that, effective March 19, 2009, Brandenburg would cease providing switched access services to Sprint. As grounds for this action, Brandenburg alleged that Sprint was not paying the undisputed charges for provision of switched access services.

On February 23, 2009, Sprint filed with the Commission a Motion to Enforce April 15, 2008 Order to Satisfy or Answer. In its Motion, Sprint alleges that Brandenburg's threatened disconnection would violate the Commission's April 15, 2008 Order, in which the Commission stated, "Brandenburg shall not terminate services to the complainant which are the subject of this dispute during the pendency of this

⁹ Id. at 4.

¹⁰ Sprint's February 3, 2009 Status Report at 1.

¹¹ Brandenburg's February 3, 2009 Status Report at 1.

matter.”¹² Sprint denies that it has not paid any undisputed amounts and requests that the Commission issue an Order enforcing paragraph 2 of the April 15, 2008 Order.

On February 26, 2009, Brandenburg filed its Response to Sprint’s Motion to Enforce April 15, 2008 Order to Satisfy or Answer. In its response, Brandenburg claimed that it had not terminated services to Sprint and would not do so without Commission authorization. Brandenburg claimed that it had “merely taken all of the necessary prerequisite steps to terminate service”¹³ so that it could promptly terminate service in the event of a Commission Order authorizing the termination.

On March 9, 2009, Brandenburg filed a motion with the Commission requesting that the Commission schedule an emergency oral argument to compel payment of the undisputed access charges. As grounds for its motion, Brandenburg asserted that it had a very real concern about its ability to receive payment from Sprint due to “Sprint’s precarious financial condition in an unstable economic environment.”¹⁴

In response to Brandenburg’s Motion for Emergency Oral Argument, Sprint asserted that its financial position is not relevant to the proceeding and also stated that, at the end of 2008, it had \$3.7 billion on hand, which is “more than sufficient to address Brandenburg’s claims in this proceeding.”¹⁵ Sprint also disputes Brandenburg’s claim

¹² Sprint’s Motion to Enforce April 15, 2008 Order to Satisfy or Answer at 2, quoting Order to Satisfy or Answer, April 15, 2008, ¶ 2.

¹³ Brandenburg’s Response to Sprint’s Motion to Enforce April 15, 2008 Order to Satisfy or Answer at 1.

¹⁴ Brandenburg’s Motion for Emergency Oral Argument on Brandenburg Telephone’s Motion to Compel Payment of Access Charges at 1.

¹⁵ Sprint’s Response to Brandenburg’s Reply and Motion for Emergency Oral Argument at 1.

that the unpaid amounts are undisputed charges. Sprint asserts that all unpaid amounts are for disputed charges.¹⁶

DISCUSSION

It is clear from the parties' filings that the possibility of settlement is virtually nonexistent. It is also clear that there is little, if no, agreement on what are and what are not disputed charges. In light of the tangled nature of disputed and undisputed charges, the Commission is hesitant to make a finding as to liability, such as compelling Sprint to pay charges that it disputes or schedule an emergency oral argument without the benefit of a full hearing. The disputes are complex enough that the record of the case, thus far, is insufficient to allow the Commission to rule in favor of Brandenburg's Motion to Compel Payment or for its Motion for Emergency Oral Argument. The Commission, however, believes that a formal hearing should be held in this matter in the near future. To that end, the parties shall adhere to the procedural schedule put forth below.

IT IS THEREFORE ORDERED that

1. Brandenburg's Emergency Motion to Compel Payment of Access Charges is denied.
2. Brandenburg's Motion for Emergency Oral Argument is denied.
3. Sprint's Motion to Enforce April 15, 2008 Order to Satisfy or Answer is granted.
4. Supplemental requests for information shall be filed with the Commission and served on all parties no later than July 13, 2009.
5. Responses and objections to supplemental requests for information shall be filed with the Commission and served on all parties no later than July 20, 2009.

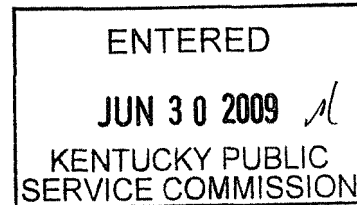
¹⁶ Id. at 2.

6. Direct testimony of all witnesses shall be filed with the Commission and served on all parties no later than July 21, 2009.

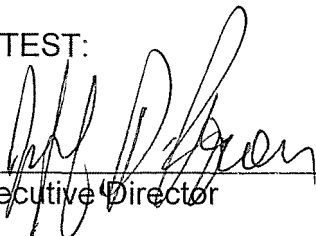
7. Rebuttal testimony shall be filed with the Commission and served on all parties no later than July 31, 2009.

8. A public hearing shall be held on August 11, 2009 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky and shall continue until concluded.

By the Commission



ATTEST:


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