

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

This case is before the Commission on Complaint of Sprint Communications Company L.P. ("Sprint") against Brandenburg Telephone Company ("Brandenburg"). Sprint is an Interexchange Carrier ("IXC") in Kentucky that carries interexchange wireless traffic for Sprint PCS and Nextel, which are Commercial Mobile Radio Service ("CMRS") providers. Brandenburg is an Incumbent Local Exchange Carrier ("ILEC") which terminates interexchange long-distance calls that include CMRS-originated traffic.

Sprint alleges that Brandenburg is not properly determining the jurisdiction of CMRS calls, an allegation that Brandenburg denies. Sprint has requested a refund for alleged overcharges since 2002. Sprint also requests that the Commission order Brandenburg to accept Sprint's Percentage of Interstate Use ("PIU") and adjust its access bills accordingly. Brandenburg denies that it owes Sprint any refund and counterclaims that Sprint has underpaid for access charges and requests that the Commission order Sprint to pay the alleged unpaid charges.

INTRODUCTION

Sprint alleges that Brandenburg is overcharging Sprint for interstate access traffic at the higher intrastate access rates for terminating traffic from interstate wireless calls. Sprint requests that the Commission order Brandenburg to accept the PIU which Sprint provides to Brandenburg on a quarterly basis to approximately reflect the actual jurisdiction (whether interstate or intrastate) of the traffic Sprint terminates instead of using the Calling Party Number (“CPN”) method that Brandenburg is currently using to determine the jurisdiction of the traffic in question. Sprint alleges that Brandenburg applies the PIU factor provided by Sprint to only a small portion of the traffic at issue, whereas it should apply to all traffic terminated over the access facilities to Brandenburg. Sprint disagrees with Brandenburg’s billings and, beginning in February 2008, began withholding payment for access traffic. On March 28, 2008, Brandenburg informed Sprint that it would cease terminating switched access traffic from Sprint if the alleged back bills were not paid. This complaint followed.

A formal hearing was convened on August 11, 2009 and post-hearing briefs have been filed. This case is ripe for a decision.

SPRINT’S ARGUMENT

Sprint claims that Brandenburg relies solely on the originating and terminating CPNs rather than properly considering the geographic location of the calling party to determine the jurisdiction of calls being terminated. Sprint alleges that it became aware of similar nationwide problems in the late 1990s and has been addressing the problem by prioritizing based on Sprint’s financial exposure with each carrier. Sprint claims that

it began negotiating with Brandenburg in November 2007 and estimates that, over the years, it has been significantly overpaying Brandenburg.

Sprint asserts that the nature of wireless service requires the jurisdiction of such calls to be determined differently than traditional telephone calls and that the Federal Communications Commission (“FCC”) has recognized the same.¹ As an example of Brandenburg’s inappropriate application of access rates, Sprint offers that Brandenburg assesses intrastate access rates on a call from a wireless subscriber whose telephone number is assigned to a rate center in Kentucky and who, while visiting New York, places a call to a Brandenburg customer in Kentucky. Sprint states that this is clearly an interstate call, but Brandenburg rates this call as an intrastate call, even though the call is made from a different state and should be charged at the lower interstate rates. Sprint argues that Brandenburg’s interstate tariff on file with the FCC provides that, when a wireless call enters Sprint’s network from a state other than Kentucky, it must be treated as an interstate call when terminated to Brandenburg in Kentucky.

Sprint alleges that it provides call detail information sufficient for Brandenburg to determine the appropriate jurisdiction of calls being terminated and the accuracy of the PIU. Sprint claims that the originating call detail records supplied to Brandenburg contain information needed to differentiate between a wireless phone call placed from within Kentucky and a call placed from outside the state. This information is known as the Jurisdictional Information Parameter (“JIP”), and Sprint claims that Brandenburg can

¹ The FCC has deemed IntraMTA (Major Trading Area) calls, whether interstate or intrastate, to be local calls. See In the Matter of Implementation of the Local Competition Provisions of Telecomms. Act of 1996, CC Docket No. 96-98, 11 F.C.C.R. 15499, First Report and Order, ¶ 1043 (1996).

determine from this parameter the approximate geographic location where a wireless call originated in order to apply the appropriate access rate. Sprint claims that Brandenburg refuses to utilize the JIP field for reasons not articulated.

Sprint admits that the method employed to determine the general geographic location where a wireless call is made is not 100-percent accurate because wireless networks are not precisely contained within state boundaries. For example, a call made from a location near Covington, Kentucky on a Sprint wireless phone to a Brandenburg subscriber in Kentucky might appear to originate from a switch in Cincinnati, Ohio and would thereby be identified as an interstate call, when, in fact, it is an intrastate call. However, Sprint claims that these are rare instances that contribute only a small fraction of the traffic relied on to develop the PIU.

Sprint requests that: (1) the Commission find that Brandenburg's use of originating and terminating CPNs to assign jurisdiction to a wireless call is incorrect and violates its tariff; (2) the Commission order that Brandenburg is obligated to issue bills based on Sprint's PIU; (3) the Commission order that Sprint's PIU is the proper factor to be used to determine the proper billing for all times in dispute; (4) the Commission order Brandenburg to refund all overpayments; and (5) the Commission order Brandenburg to issue a credit to Sprint's access billing account for the payments that Sprint has withheld and issue a refund for the difference between what Sprint overpaid and what it withheld.

BRANDENBURG'S ARGUMENT

Brandenburg asserts that it is appropriately charging Sprint according to its interstate and intrastate switched access tariffs. Brandenburg states that the tariffs

provide that, when there is a mix of interstate and intrastate traffic, the PIU factor is only applied in the absence of sufficient call detail records. Brandenburg asserts that it appropriately uses the originating and terminating telephone numbers to determine a call's jurisdiction. Brandenburg states that it is billing Sprint based on actual jurisdiction reported in the call detail records and that this method is consistent with Brandenburg's tariffs.

Brandenburg states that it uses the PIU only when it is unable to determine the appropriate jurisdiction of calls by call detail records. Brandenburg also alleges that Sprint's PIU is flawed in that it treats all interMTA traffic as interstate calls.² Brandenburg claims to have proven this by using two cell phones with different area codes to call from locations that should have been rated as intrastate calls that Sprint identified as interstate calls. Because of these inconsistencies, Brandenburg refuses to: (1) accept Sprint's PIU; and (2) accept Sprint's JIP information as accurate in determining the jurisdiction of wireless calls.

Brandenburg requests that: (1) the Commission deny Sprint's claim and allow Brandenburg to continue to assign jurisdiction by using the originating and terminating call detail records; (2) the Commission order Sprint to pay the entire amount of unpaid access charges; and (3) the Commission allow Brandenburg to terminate access services to Sprint in the event of future nonpayment.

DISCUSSION

The traffic at issue in this dispute consists only of interMTA traffic that Sprint, as an IXC, delivers to Brandenburg over terminating toll trunks. The Commission is being

² See Exhibits A and B to the prefiled testimony of Allison Willoughby.

asked to resolve the appropriate means for determining whether that traffic is interstate or intrastate in nature. Brandenburg assesses interstate access rates pursuant to its National Exchange Carrier Association (“NECA”) Tariff No. 5. Brandenburg applies intrastate access charges pursuant to the Duo County Telephone Coop. Corp., Inc. PSC KY Tariff No. 2A (“Duo County Tariff”) which it has adopted.

PIU

Because the same trunk groups are utilized for both interstate and intrastate access, the traffic must be either measured directly or estimated to determine the proper jurisdiction of the calls being terminated. The PIU factor is a mechanism described in both Brandenburg’s interstate and intrastate access tariffs for estimating the jurisdiction of such trunk groups containing mixed jurisdictional traffic.

The applicable intrastate provision in the Duo County Tariff, Section 2.3.11(C), directs that :

When originating call details are insufficient to determine the jurisdiction for the call, the [IXC] shall supply the projected interstate percentage or authorize the Telephone Company to use the Telephone Company developed percentage. This percentage shall be used by the Telephone Company as the projected interstate percentage for originating and terminating access minutes.

In order to insure the accuracy of the PIU, Brandenburg may request that an audit of Sprint’s methodology be conducted by an independent auditor.³

In this instance, Brandenburg alleges that the basic call detail records (showing the originating and terminating telephone numbers) are sufficient for determining the jurisdiction of the wireless calls being terminated and disputes the appropriateness and

³ Duo County Tariff § 2.3.11(D); NECA Tariff § 2.3.11(c)(4).

accuracy of the JIP field for further refining the jurisdiction of calls. It is only in the rare instances when Brandenburg does not use the CPN to determine the jurisdiction of the call that it applies the PIU factor.

Sprint provided two traffic studies to Brandenburg to support the accuracy of the PIU factor. Brandenburg, to verify the accuracy of the traffic study, conducted a field test in the same areas from which the traffic studies were developed. Brandenburg stationed employees at locations in the MTAs outside of MTA 26, the MTA in which Brandenburg is located. These employees, utilizing handsets with Kentucky numbers, placed several calls from within Kentucky to Brandenburg telephone numbers, thereby establishing the calls as intrastate. Brandenburg later reviewed the call detail records supplied by Sprint to determine the jurisdiction recorded for these specific calls and found that Sprint had inappropriately assigned them as interstate calls. Based on this, Brandenburg refused to accept Sprint's method of assigning jurisdiction to non-local calls and rejected Sprint's PIU factor.

Sprint explained that the incorrect jurisdiction may be assigned to a wireless call made from within Kentucky if it is picked up by a tower that is connected to a switch located in another state. Sprint admitted that those calls would be incorrectly classified, but it asserted that it took this misclassification into account when calculating the PIU. Sprint also stated that, if Brandenburg disputed the PIU, Brandenburg should request an independent audit under the tariff and not dispute the PIU in this unilateral manner.

A review of the applicable tariff provisions leads the Commission to conclude that Brandenburg should not have rejected Sprint's PIU factor just because it found an instance in which there was a discrepancy. The tariff language is clear: Brandenburg

must accept Sprint's PIU or Brandenburg may, pursuant to Duo County Tariff § 2.3.11(D) and NECA Tariff § 2.3.11(c)(4), invoke its right to an independent audit.

The Proper Method to Determine the Jurisdiction of a Call

Brandenburg admits that relying strictly on the CPN to determine the jurisdiction of a wireless call will not always result in application of the appropriate jurisdiction.⁴ Sprint, likewise, admits that its JIP field does not always accurately reflect the geographic location from which a call was made.⁵ Brandenburg, offering no supporting evidence, however, argued that its approach is more objective than Sprint's because, when it erroneously assigns intrastate jurisdiction to an interstate call, the resulting charge is often offset by intrastate calls that are similarly mischaracterized as interstate.⁶ Brandenburg asserts that Sprint's methodology is less objective because it will assign the incorrect jurisdiction only to intrastate calls but never to interstate calls.⁷ Sprint counters by stating that, when calculating the PIU, it accounted for the instances when it would erroneously assign interstate jurisdiction to an intrastate call.

Brandenburg admits that relying on the CPN does not properly recognize the physical location of a caller originating a wireless call. Brandenburg further stated that its method of assigning jurisdiction based on the CPN would result in a call made from a wireless phone with a Kentucky number to a Brandenburg subscriber always being

⁴ TR at 132.

⁵ As discussed, supra, Sprint claims that it takes this into account when calculating the PIU.

⁶ TR at 175-176.

⁷ Id.

rated as intrastate regardless of the actual geographic location where the call was made.⁸ Brandenburg argued that its tariff required it to use the CPN to determine jurisdiction, relying on Section 2.3.11(C). This section provides, in pertinent part, that:

For originating access minutes, the projected interstate percentage will be developed on a monthly basis by end office where the Feature Group C or Feature Group I) Switched Access Service access minutes are measured by dividing the measured interstate originating access minutes **(the access minutes where the calling number is in one state and the called number is in another state)** by the total originating access minutes, when the call detail is adequate to determine the appropriate jurisdiction.

(Emphasis added.)

Brandenburg argued that, under the tariff provision, in order for a call to be “interstate,” a number had to be assigned to another state and calling a number assigned to Kentucky. In response to a Commission Staff question, Brandenburg’s witness opined that the tariff may not have contemplated wireless communications when it was drafted, but stated that the tariff still required Brandenburg to use the CPN and the called number to determine jurisdiction rather than the location of the caller.⁹

Sprint asserts that its use of the JIP field is the most appropriate method for verifying the jurisdiction of a wireless call.¹⁰ Sprint, however, acknowledges that relying on the JIP is not 100-percent accurate in determining the jurisdiction of a wireless call.¹¹

⁸ TR at 165.

⁹ TR at 178.

¹⁰ TR at 96-97.

¹¹ TR at 97.

In order to counter this inaccuracy, Sprint proposes that all calls that go through Sprint's IXC network to Brandenburg be subject to the PIU.¹²

Based on the foregoing, the Commission finds that Brandenburg's reliance on only the CPN to assign the jurisdiction of a wireless call unreasonably allocates substantial amounts of interstate traffic to the intrastate jurisdiction, resulting in the application of access charges that are not in compliance with Section 2.3.11(C) of Brandenburg's tariff. Brandenburg admits that the use of the CPN is not always reliable, yet it makes an unsubstantiated claim that, because the use of the CPN may result in rating an intrastate call as an interstate call, the errors cancel each other out. The Commission is not convinced that Brandenburg's reliance on the CPN to determine the jurisdiction of wireless calls is more objective or accurate than the methodology applied by Sprint. More importantly, Brandenburg's usage of the CPN directly conflicts with the provision of its tariff that defines an interstate call as one "where the calling number is in one state and the called number is in another state."¹³ The language clearly contemplates that the geographic location where the wireless call is made determines the jurisdiction of the call.

Second, as both parties admit that neither the use of the JIP field nor relying on the CPN results in entirely accurate allocation of traffic to the proper jurisdiction, the parties should apply the PIU to calls delivered to Brandenburg via Sprint's IXC network pursuant to Section 2.3.11(C) of the Duo County tariff. Brandenburg, as discussed

¹² Id.

¹³ Duo County Tariff, Section 2.3.11(C)

supra, has the ability to verify the accuracy of the PIU by requesting an audit pursuant to both the Duo County intrastate and the NECA interstate tariffs.

CONCLUSION

The issues before the Commission were presented in such a way as to leave little room for compromise between the two parties. The Commission, in effect, must simply choose one party's interpretation of the tariff and method of assigning jurisdiction over the other's. Accordingly, we agree with Sprint. Brandenburg's tariff requires it to accept Sprint's PIU, subject to an independent audit. Furthermore, Brandenburg's tariff requires it to consider the geographic location of a wireless call, not the calling party's number, in order to determine the jurisdiction of a wireless call. We also conclude that the use of Sprint's JIP field and PIU is the most accurate method by which to assign the jurisdiction of a wireless call.

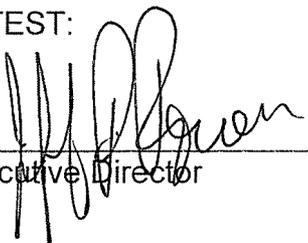
Based on the foregoing, and being otherwise sufficiently advised, IT IS HEREBY ORDERED that:

1. Sprint's methodology for determining the PIU should be applied for calculating compensation.
2. Ordering paragraph 1 is stayed for a period of 30 days to allow:
 - a. Brandenburg to take advantage of the audit provisions in its tariffs;or
 - b. The parties to reach an agreement on the amount of compensation.
3. This is a final and appealable Order.

By the Commission

ENTERED *ew*
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