

RECEIVED

JUL 22 2009

PUBLIC SERVICE  
COMMISSION

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**SPRINT’S PETITION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF TESTIMONY OF JULIE A. WALKER**

Sprint Communications Company, L.P. (“Sprint”), for its Petition for Confidential Treatment of portions of the prefiled testimony of Julie A. Walker, including Exhibits 4 and 7, pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), states as follows:

**BACKGROUND**

By this Petition, Sprint requests that the Public Service Commission (“Commission”) grant confidential protection to certain information that is confidential and proprietary and that pertains to fully competitive aspects of Sprint’s business. Specifically, Sprint petitions the Commission to grant confidential protection to the confidential and proprietary portions of prefiled testimony, including references to data contained in the Sprint Percentage of Interstate Usage (“PIU”) summary (Attachment JAW-4) and the Sprint billing dispute summary (Attachment JAW-7). Attached herewith is a copy of the testimony and Attachments with confidential and proprietary portions highlighted.<sup>1</sup>

---

<sup>1</sup> Brandenburg Telephone Company’s representatives have entered into a protective agreement with Sprint under which each party will provide to the other material for which confidential treatment is sought. Thus, granting this motion will have no prejudicial effect on any party.

## **GROUNDS FOR PETITION**

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Both requirements are met here. There is actual competition, as the information in question concerns confidential and proprietary information related to the interexchange services and wireless telecommunications business, which are among the most highly competitive utility services subject to the Commission's jurisdiction. Sprint is an interexchange carrier and its affiliate provides wireless services in Kentucky. Competitors providing identical services are not required to disclose the types of information requested by, and filed with, the Commission in this case. The confidential business information disclosed to the Commission in this case is the type of information which would enable Sprint's competitors to discover, and make use of, confidential information concerning Sprint's costs to terminate traffic not only to exchanges of Brandenburg Telephone Company, but to other exchanges in the state, all to the unfair competitive disadvantage of Sprint.

2. Specifically, the information provided in Attachments 4 and 7 to the direct testimony of Julie Walker includes a Traffic Study Analysis and a billing dispute summary prepared by Sprint.

3. The Traffic Study Analysis compares PIU methodologies applied by Sprint and Brandenburg Telephone Company. Critically, the study discloses the exact number of minutes

of use terminating from the Sprint network to Brandenburg's end offices during a specific time period. The study also discloses the PIU factor calculated by Sprint using the methodology described in the Exhibit, comparing it to the PIU factor derived by Brandenburg Telephone Company using a different methodology. Finally, the study discloses what Sprint believes is its *exact terminating access cost* for calls handled by Brandenburg Telephone Company.

4. The Traffic Study Analysis was based upon a very large data set. As a statistical matter, competitors interested in estimated Sprint's market share, traffic mix, and gross margins could use this Traffic Study Analysis to extrapolate data concerning Sprint's operations and profitability elsewhere. Assuming the PIU factor in the Traffic Study Analysis would be a reliable factor to apply elsewhere, competitors could estimate Sprint's costs of network termination and origination in other areas of the state. Since the other input to determine switched access expense per minute is the access rate itself, which as a matter of law is published, Sprint's PIU factor is the key to estimating its access costs. Anyone with the PIU can make an inference to estimate Sprint's costs. Such an estimate could be valuable to any interexchange carrier that competes with Sprint either as a retail provider of long distance services or as a wholesale provider to termination services to other carriers.

5. The billing dispute summary is entitled to protection for the same reasons. It details volumes of access purchases for a period of years, and includes PIU information for each month detailed in the summary. Used separately or in combination with the Traffic Study Analysis, a competitor could make valuable inferences about Sprint's relative costs and marketplace performance.

6. The documents for which confidential treatment is sought are maintained internally by Sprint. The documents are not on file with the FCC, SEC or other public agency,

are not available from any commercial or other source outside of Sprint, and are limited in distribution to those employees who have a business reason to have access to such information. Sprint does not expect to learn about its competitors' network costs by reviewing records at the Commission. Neither should Sprint be expected to furnish that information to its competitors by virtue of having supported its claims in this case. Further, the public interest to be served by its disclosure is minimal at best. By imposing unfair competitive injury upon Sprint, disclosure in fact harms the public interest.

7. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” The same reasoning applies here.

8. In 96-ORD-176, the Office of the Attorney General found that a municipal utility could properly deny a request for billing records that could be used to infer a customer's "competitive position." The Commission cited that opinion with approval when it granted BellSouth's request to protect information concerning the amount of money involved in a billing dispute with another utility. In *SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 2005-00053 (Order dated March 31, 2006), the Commission noted the need to balance the competing interests of privacy and the public's interest in [government] transparency, citing Kentucky cases stating that questions about "clearly unwarranted" invasions of privacy are "intrinsically situational" and must be determined within a specific context. The context is clear here: the Traffic Analysis and the billing dispute summary filed as Attachments 4 and 7 to Ms. Walker's testimony would likely be of great interest to Sprint's competitors, and likely of no interest to anyone else. Thus, protection of the data would not undermine the purpose of the Open Records Act, which is primarily to inform the public as to whether government agencies are properly executing their statutory functions. As the Commission put it in *SouthEast Telephone*, "this aim is not fostered by disclosure of information about private citizens accumulated in various government files that reveals little or nothing about an agency's own conduct. *Id.* at 4, citing *Hines v. Com., Dept. of Treasury*, 41 S.W. 39 872 (Ky. App. 2001).

9. As shown above, disclosure of the values and factors in Sprint's Traffic Study Analysis and billing dispute summary would enable competitors to infer or suggest the competitive position of Sprint, to Sprint's unfair competitive disadvantage. Thus, the Commission should protect the confidential portions of the information provided in response to the requests of Commission Staff. Those portions demonstrate on their face that they merit confidential protection pursuant to *Hoy, Marina Management*, and KRS 61.878(1)(c)1. If the

Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Sprint and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

10. In accordance with the provisions of 807 KAR 5:001(7), Sprint files herewith (1) set of the confidential testimony and exhibits in redacted form for filing in the public record.

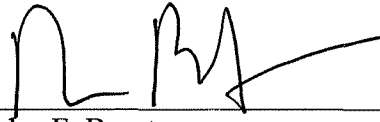
### **CONCLUSION**

For the reasons stated, Sprint respectfully requests that the Commission grant confidential protection for the information at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: July 21, 2009

Respectfully submitted,

By:



---

Douglas F. Brent  
STOLL KEENON OGDEN PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 333-6000  
(502) 627-8722 (fax)

John N. Hughes  
124 West Todd Street  
Frankfort, Kentucky 40601  
(502) 227-7270

Philip R. Schenkenberg  
Briggs and Morgan, P.A.  
2200 IDS Center  
Minneapolis, MN 55402  
(612) 977-8246  
(612) 977-8650 (fax)

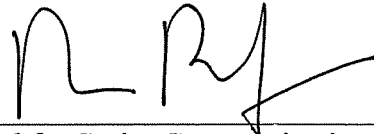
*Counsel for Sprint Communications Co., L.P*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Petition was served upon the following persons by first class United States mail, postage prepaid, on the 21st day of July, 2009:

John E. Selent  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202  
*Counsel for Brandenburg Telephone Co.*

J. D. Tobin, Jr.  
President / Manager  
Brandenburg Telephone Company, Inc.  
200 Telco Road  
P. O. Box 599  
Brandenburg, KY 40108



\_\_\_\_\_  
Counsel for Sprint Communications Co., L.P.