

John E. Selent  
502-540-2315  
john.selent@dinslaw.com

April 25, 2008

**VIA HAND DELIVERY**

Hon. Stephanie Stumbo  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

RECEIVED

APR 25 2008

PUBLIC SERVICE  
COMMISSION

**Re: *In the Matter of Complaint of Sprint Communications Company L.P. Against  
Brandenburg Telephone Company for the Unlawful Imposition of Access  
Charges; Case No. 2008-00135***

Dear Ms. Stumbo:

We have enclosed for filing in the above-styled case the following two documents.

1. A redacted original and eleven (11) copies of the answer and counterclaim of Brandenburg Telephone Company ("Brandenburg Telephone") in the above-styled matter.
2. An original and eleven (11) copies of Brandenburg Telephone's petition for confidential treatment of the material redacted from its answer and counterclaim.

As required by the regulations of the Public Service Commission of the Commonwealth of Kentucky, the petition for confidential treatment contains one highlighted original (clearly identified as "ORIGINAL") of the page(s) containing any potentially confidential material, along with ten (10) redacted copies of the same page(s).

Please file-stamp one copy of each of these two filings and return them to our courier.

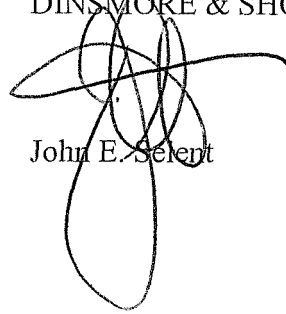
Hon. Stephanie Stumbo  
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Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to read "John E. Seibert". The signature is highly stylized with overlapping loops and a long horizontal stroke extending to the right.

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF COMPLAINT )  
OF SPRINT COMMUNICATIONS )  
COMPANY L.P. AGAINST )  
BRANDENBURG TELEPHONE )  
COMPANY FOR THE UNLAWFUL )  
IMPOSITION OF ACCESS CHARGES )

Case No. 2008-135

RECEIVED

APR 25 2008

PUBLIC SERVICE  
COMMISSION

ANSWER AND COUNTERCLAIM

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, and pursuant to 807 KAR 5:001, Section 12, and the April 15, 2008 Order of the Public Service Commission of Kentucky ("the Commission"), states as follows for its Answer to the Complaint of Sprint Communications Company L.P. ("Sprint") Against Brandenburg Telephone Company and Request for Expedited Relief ("Complaint").

1. Brandenburg Telephone admits the allegations contained in paragraph 1 of the Complaint.
2. Brandenburg Telephone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and therefore denies them.
3. Brandenburg Telephone admits the allegations contained in paragraph 3 of the Complaint.
4. Brandenburg Telephone admits the allegations contained in paragraph 4 of the Complaint.
5. Brandenburg Telephone admits the allegations contained in paragraph 5 of the Complaint.

6. The allegations contained in paragraph 6 of the Complaint are legal conclusions that require no response and are, therefore, denied.

7. The allegations contained in paragraph 7 of the Complaint are legal conclusions that require no response and are, therefore, denied.

8. The allegations contained in paragraph 8 of the Complaint are legal conclusions that require no response and are, therefore, denied.

9. The allegations contained in paragraph 9 of the Complaint are legal conclusions that require no response and are, therefore, denied.

10. The allegations contained in paragraph 10 of the Complaint are legal conclusions that require no response and are, therefore, denied.

11. The allegations contained in the first grammatical sentence of paragraph 11 of the Complaint are legal conclusions that require no response and are, therefore, denied. Brandenburg Telephone admits the remaining allegations contained in paragraph 11 of the Complaint, but alleges that the Percent of Interstate Use ("PIU") factor is applicable only insofar as it is described in Brandenburg Telephone's filed and approved tariff(s).

12. Brandenburg Telephone denies the allegations contained in paragraph 12 of the Complaint. Brandenburg Telephone further states that, pursuant to the plain language of Duo County Telephone Cooperative Corp., Inc. P.S.C. KY No. 2A (the "Duo County Tariff"), it is charging access rates on properly jurisdictionalized access traffic delivered over the Feature Group D access trunks Sprint (the interexchange carrier ("IXC")) ordered pursuant to that tariff.

13. Brandenburg Telephone admits the allegations contained in the first grammatical sentence of paragraph 13 of the Complaint to the extent they allege that, when determining the jurisdiction of a call placed from a wireline phone over a Feature Group D ("FGD") access line,

Brandenburg Telephone assesses tariffed intra- or interstate access charges by comparing the calling party number ("CPN") with the number of the called party. The remaining allegations contained in paragraph 13 are legal conclusions that require no response and are, therefore, denied.

14. Brandenburg Telephone admits the allegations contained in the first grammatical sentences of paragraph 14 of the Complaint. Brandenburg Telephone denies the remaining allegations contained in paragraph 14 of the Complaint.

15. Brandenburg Telephone admits the allegations contained in paragraph 15 of the Complaint to the extent they allege that the CPN used by Brandenburg Telephone for jurisdictionalizing a call from a Sprint PCS/Nextel subscriber to one of Brandenburg Telephone's customers represents the geographic location of the NPA-NXX assigned to the Sprint PCS/Nextel phone. Brandenburg Telephone further admits that it bills Sprint its tariffed and approved intrastate or interstate access charges (as appropriate) for terminating such calls consistent with the plain language of its filed and approved tariffs. Brandenburg Telephone denies the remaining allegations contained in paragraph 15 of the Complaint.

16. Brandenburg Telephone admits the allegations contained in paragraph 16 of the Complaint to the extent they allege that Brandenburg Telephone only applies PIU information provided by Sprint to the portion of traffic exchanged between Brandenburg Telephone and Sprint for which Brandenburg Telephone is unable to determine jurisdiction. Brandenburg Telephone further admits the allegations contained in paragraph 16 of the Complaint to the extent they allege that Sprint provided Brandenburg Telephone a Detail of Claims report in November of 2007 and filed a dispute around that time. Brandenburg Telephone further admits the allegations contained in paragraph 16 of the Complaint to the extent they allege that PIU is a factor used to determine the

amount of traffic to be billed at the interstate rate. Brandenburg Telephone denies the remaining allegations contained in paragraph 16 of the Complaint.

17. Brandenburg Telephone admits the allegations contained in paragraph 17 of the Complaint to the extent they allege that Brandenburg Telephone concurs in the Duo County Telephone Cooperative Corp, Inc. PSC KY No. 2A for intrastate access services. Brandenburg Telephone further admits the allegations contained in paragraph 17 of the Complaint to the extent they allege that it participated in a conference call with Sprint on or about February 6, 2008 and that certain traffic at issue in this matter was discussed during that call. Brandenburg Telephone states that the language of Section 2.3.11(C)(3) of the Duo County Tariff speaks for itself. Brandenburg Telephone denies the remaining allegations contained in paragraph 17 of the Complaint.

18. Brandenburg Telephone admits the allegations contained in paragraph 18 of the Complaint to the extent they allege that Brandenburg Telephone denied Sprint's dispute and that Brandenburg Telephone and Sprint have been unsuccessful in settling this matter. Brandenburg Telephone further admits the allegations contained in Paragraph 18 of the Complaint to the extent they allege that, by letter dated March 28, 2008, it threatened to disconnect services to Sprint. Brandenburg Telephone denies the remaining allegations contained in paragraph 18 of the Complaint.

19. Brandenburg Telephone denies the allegations contained in paragraph 19 of the Complaint.

20. Brandenburg Telephone admits that it assesses intrastate access charges consistent with the terms of its filed and approved intrastate access tariff. Brandenburg Telephone states that the language of Section 2.3.11(C)(1)(a) of the NECA Tariff speaks for itself. Brandenburg Telephone denies the remaining allegations contained in paragraph 20 of the Complaint.

21. Brandenburg Telephone states that the language of paragraph 1044 of the First Report and Order speaks for itself. The remaining allegations contained in paragraph 21 of the Complaint are legal conclusions that require no response and are, therefore, denied.

22. Brandenburg Telephone admits the allegations contained in paragraph 22 of the Complaint to the extent they allege that Brandenburg Telephone has refused to apply Sprint's improper PIU figure. Brandenburg Telephone denies the remaining allegations contained in paragraph 22 of the Complaint.

23. Brandenburg Telephone denies that Sprint is entitled to the relief requested or any relief whatsoever.

24. Brandenburg Telephone denies any and all allegations made in the Complaint that are not specifically admitted herein.

#### **AFFIRMATIVE DEFENSES**

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

26. Brandenburg Telephone is charging Sprint (the IXC) consistent with the terms of the Duo County Tariff.

27. Sprint has failed to join all indispensable parties. Any decrease in the amount of intrastate access minutes Brandenburg Telephone bills to Sprint will necessarily result in a corresponding increase to the non-traffic sensitive revenue ("NTSR") component of Brandenburg Telephone's intrastate access charges. Because the NTSR is spread evenly across all terminating intrastate access minutes of usage, Sprint's complaint could have the practical effect of increasing not only its own intrastate access charges, but those of every other IXC terminating calls to Brandenburg Telephone's network. Moreover, because Sprint's complaint seeks relief on both a retroactive and prospective basis, this corresponding effect on the NTSR will also apply both

retroactively and prospectively. Therefore, complete relief cannot be granted in the absence of Sprint joining all IXCs terminating access calls to Brandenburg Telephone.

28. Sprint has suffered no damage entitling it to relief. As noted in the previous defense, Sprint's complaint has significant implications for the NTSR component of Brandenburg Telephone's intrastate access rates. Because the NTSR is tied to a fixed revenue requirement, any money Sprint may avoid paying on interstate access charges will ultimately be recovered in the form of the higher NTSR (assessed to intrastate access rates) that will need to be assessed on its intrastate access charges for the period in question. Ultimately, these consequences will negate any financial gain that Sprint may believe is obtainable with respect to its access bills in this matter.

29. Section 3.9.3(B) of the Duo County Tariff provides that the NTSR will be calculated "for each customer on an annual basis." It further provides, "The sum of all customers' actual annual intrastate terminating rated access minutes will be used by the Telephone Company to determine the annual percent distribution for each customer." *Id.*

30. Sprint's claims relate to charges it has not properly disputed pursuant to the terms of the Duo County Tariff.

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

32. To the extent relevant, Sprint's PIU figures are speculative, inaccurate, and based on insufficient proof to justify the relief Sprint seeks in this matter.

33. Sprint's claims are barred by the doctrine of laches.

34. Sprint has failed to mitigate its alleged damages.

35. Sprint's claims are barred by the applicable statute of limitations.

36. Sprint's claims are barred by applicable Kentucky Administrative Regulations.

37. Sprint's claims are barred by applicable tariffs.



38. Sprints claims are otherwise time barred.

**WHEREFORE**, Brandenburg Telephone Company respectfully requests that the Commission take the following actions:

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

### **COUNTERCLAIM**

Brandenburg Telephone Company ("Brandenburg 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 Public Service Commission of Kentucky (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 any "complaint as to [the] rates or service of any utility" and is empowered to investigate and remedy such complaints.

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 (2) 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. Brandenburg Telephone incorporates by reference the admissions and denials contained in its Answer and Affirmative Defenses.

5. Sprint has failed and continues to fail to pay Brandenburg Telephone for intrastate switched access services properly billed to Sprint in accordance with Duo County Telephone Cooperative Corp., Inc. PSC KY No. 2A (the "Duo County Tariff").

6. Brandenburg Telephone provides intrastate and interstate access services to Sprint.

7. Brandenburg Telephone provides intrastate access services to Sprint in accordance with the provisions of the Duo County Tariff.

8. Section 2.3.12 of the Duo County Tariff provides that, "when mixed interstate and intrastate Switched Access Service is provided, all charges [for such service]...will be prorated between interstate and intrastate" and "the percentage determined as set forth in [Section] 2.3.11...will serve as the basis for prorating [such] charges *unless the Telephone Company [that is, Brandenburg Telephone] is billing according to actuals by jurisdiction.*" (Emphasis added.)

9. The "percentage determined as set forth in [Section 2.3.11]" of the Duo County Tariff is a "projected estimate of [Sprint's switched access] traffic, split between the interstate and intrastate jurisdictions." That projected estimate is otherwise known as a jurisdictional report. The Percent of Interstate Use ("PIU") factor referred to in Sprint's Complaint is one of two factors in a jurisdictional report. The other factor is the percent of intrastate use, which amounts to 100% minus the PIU. (For example, if the PIU is 55%, the percent of intrastate use would be 45%.)

10. In accordance with Section 2.3.12 of the Duo County Tariff, Brandenburg Telephone need only use the jurisdictional report (or PIU) as the basis for prorating access charges between interstate and intrastate jurisdictions when it does not or cannot bill according to actuals by jurisdiction. Accordingly, Brandenburg Telephone need not use the jurisdictional report (or PIU) when it is able to determine actuals by jurisdiction.

11. In accordance with Section 2.3.12 of the Duo County Tariff, Brandenburg Telephone has billed and continues to bill Sprint according to actuals, determining the jurisdiction of the access traffic it terminates for Sprint from call detail records. Brandenburg Telephone determines the jurisdiction of access traffic in a manner consistent with Section 2.3.11(C)(1) of the Duo County Tariff.

12. Likewise, in accordance with Section 2.3.12 of the Duo County Tariff, Brandenburg Telephone utilizes the jurisdictional report (or PIU) provided by Sprint only when it is unable to determine the appropriate jurisdiction of switched access calls by reference to call detail records.

13. Brandenburg Telephone has billed the switched access services it has provided Sprint in accordance with the methodology established in the Duo County Tariff.

14. Sprint has underpaid intrastate access charges billed by Brandenburg Telephone in accordance with the Duo County Tariff since November 2007. Sprint's underpayments total the following amounts: \$50,303.10 (November 16, 2007); \$24,133.90 (December 16, 2007); \$22,223.02 (January 16, 2008); \$14,534.57 (February 16, 2008); and \$54,500.49 (March 16, 2008).

15. On or about February 8, 2008, representatives from both Brandenburg Telephone and Sprint participated in a conference call to discuss the billing of switched access charges. During that call, Sprint disputed switched access charges properly billed by Brandenburg Telephone.

16. As the basis for its dispute, Sprint incorrectly alleged (and continues to incorrectly allege) that Brandenburg Telephone must apply the PIU factor contained in the jurisdictional report despite the fact that Section 2.3.12 of the Duo County Tariff specifies that a PIU factor is not the basis for prorating access charges when Brandenburg Telephone is able (as here) to determine the jurisdiction of switched access calls from call detail records.

17. Following the February 8, 2008 conference call, Brandenburg Telephone researched Sprint's dispute and, on or about March 7, 2008, Brandenburg Telephone informed Sprint, via letter, that it had researched the dispute and was denying Sprint's dispute in its entirety, noting that the access charges "ha[d] been billed to Sprint pursuant to approved tariffs." (*See Exhibit A.*)

18. In that March 7, 2008 letter, Brandenburg Telephone notified Sprint that all outstanding balances for switched access services were due at that time and that Sprint's failure to pay the full amount of the outstanding balance could result in suspension or full disconnection of service.

19. In accordance with Commission regulations and Section 2.1.8(A) of the Duo County Tariff, Brandenburg Telephone has the right to "discontinue the provision of service" to Sprint for Sprint's nonpayment of intrastate switched access service charges.

20. On March 28, 2008, having received no payment from Sprint, Brandenburg Telephone sent Sprint a "Disconnect Notice." (*See Exhibit B.*)

21. In accordance with Commission regulations, the "Disconnect Notice" offered Sprint the right to dispute the pending termination of service.

22. That same day, on March 28, 2008, Sprint disputed the termination of service via email from Julie Walker. (*See Exhibit C.*)

23. As of the date of the filing of this Counterclaim, Sprint owes Brandenburg Telephone \$165,695.08 for intrastate switched access services provided pursuant to the Duo County Tariff.

24. Given the ongoing dispute with Sprint, and Sprint's continued failure to pay Brandenburg Telephone for access services provided pursuant to the Duo County Tariff, Brandenburg Telephone is compelled to file this Counterclaim.

**WHEREFORE**, Brandenburg Telephone Company respectfully requests that the Commission take the following actions.

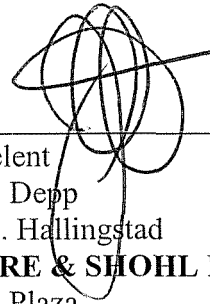
a. Order Sprint to pay the full amount of its outstanding balance (at the time the Commission enters such order) for intrastate switched access services provided by Brandenburg Telephone;

b. On a prospective basis, order Sprint Nextel to abide by the Duo County Tariff and timely remit payment for all switched access service charges to Brandenburg Telephone;

c. Allow Brandenburg Telephone Company to disconnect service to Sprint if Sprint fails to pay the full amount of its outstanding balance for switched access services provided by Brandenburg Telephone Company or fails to abide by the Duo County Tariff; and

d. Grant Brandenburg Telephone Company any and all other legal and equitable relief to which it is entitled.

Respectfully submitted,



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John E. Selent  
Edward T. Depp  
Matthew J. Hallingstad  
**DINSMORE & SHOHL LLP**  
1400 PNC Plaza  
500 W. Jefferson Street  
Louisville, KY 40202  
(502) 540-2300  
(502) 585-2207 (fax)


*Counsel to Brandenburg Telephone  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify a true and accurate copy of the foregoing was served on the following, via first-class U.S. Mail, on this 25<sup>th</sup> day of April, 2008:

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

*Counsel for Sprint  
Communication Company L.P.*

  
\_\_\_\_\_  
*Counsel to Brandenburg Telephone  
Company*



**BRANDENBURG TELEPHONE COMPANY**

200 Telco Drive  
P O Box 599  
Brandenburg, KY 40108  
270-422-2121

March 7, 2008

Sprint Nextel  
% Teoco  
12150 MONUMENT DRIVE  
SUITE 700  
FAIRFAX, VA 22033

RE: 003331

Ms. Walker

Pursuant to our conference call on February 8, 2008, Brandenburg has researched Sprint's dispute and is denying the dispute in its entirety. The CABS charges in question have been billed to Sprint pursuant to approved tariffs, consistent with industry standard practice. *See NECA's Reply before the FCC concerning the use of telephone numbers when available and PIU factors when these telephone numbers are not available (attached).*

Payment of all outstanding balances on this account is now due. Failure to pay the amounts in full within 10 calendar days may result in suspension or full disconnection of service.

Your prompt attention to this account is appreciated.

Sincerely,



Randall Bradley  
Controller

Enclosure

RB:ajp





## BRANDENBURG TELEPHONE COMPANY

200 Telco Drive  
PO Box 599  
Brandenburg, KY 40108  
270-422-2121

### DISCONNECT NOTICE

March 28, 2008

Sprint Nextel  
% Teoco  
12150 Monument Drive  
Suite 700  
Fairfax, VA 22033

julie.a.walker@sprint.com

**RE: Unpaid Invoices Accounts**

**ACCOUNT NO.: 003331-08016 , 003331-07350, and 003331-07320**

Dear Ms. Walker:

The purpose of this letter is to inform you that Brandenburg Telephone Company ("Brandenburg") intends to terminate service to Sprint effective April 14, 2008 for failure to pay switched access charges properly billed in accordance with the methodology established in NECA Tariff No. 5.

Pursuant to State and/or Federal Tariffs applicable to the provision of access services by Brandenburg to your company, this letter is to notify you that your account is now delinquent and must be paid in full by the due date in this letter to avoid termination of service. A summary of past due amounts is included in the attachment to this letter.

**Failure to pay all amounts owed in full on or before April 14, 2008 will result in service disconnection effective April 14, 2008.**

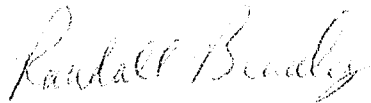
**Amounts owed for unpaid balances total \$96,660.**

In the event service is terminated for non-payment per this notice, additional charges including service re-establishment charges in addition to the payment of all pending charges will be required. Brandenburg may also require the payment of a deposit or other guarantee of payment as an ongoing condition of service.

Payment should be made to:                    Brandenburg Telephone Co.  
   P.O. Box 599  
   Brandenburg, KY 40108

The termination date of April 14, 2008 will not be affected by receipt of any subsequent bill from Brandenburg. You have the right to dispute the reasons for termination. Please call Andrea Prickett at 270-422-2121 or email her at [andrea.j@bbtel.com](mailto:andrea.j@bbtel.com) regarding payments on your delinquent accounts.

Sincerely,

A handwritten signature in cursive script that reads "Randall Bradley".

Randall Bradley  
Controller

Attachment

March 28, 2008  
Attachment

<b>Bill Date</b>	<b>Amount Owed</b>	<b>Invoice #</b>
1/16/08	\$22,223.02	003331-08016
12/16/07	\$24,133.90	003331-07350
11/16/07	\$50,303.10	003331-07320



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**From:** Walker, Julie A [FIN] [mailto:Julie.A.Walker@sprint.com]  
**Sent:** Friday, March 28, 2008 6:22 PM  
**To:** Andrea Prickett  
**Cc:** rbradley@bbtel.com; Roach, Regina S [FIN]; Clouser, Amy S [FIN]  
**Subject:** Brandenburg Wireless Roaming disputes

Hi Andrea,

Wondering what it's going to take to get Brandenburg to come to the table and discuss a solution to the wireless roaming issue. If your intent is truly to disconnect Sprint's service, then we obviously need to set up another call, as we are confident we have a bona fide, good faith billing dispute with your company, which I know you'd want to resolve rather than pursue an action affecting our customers.

With that said, this is a simple issue - we've been down this road with dozens of carriers, and each time it resulted in the same outcome - each carrier fixed their PIU to reflect what the accurate calling pattern is for the traffic in question. Regardless of what NECA "suggests", we can defend our position that you can't use Calling Party to Called numbers to determine jurisdiction any longer. The caller is many times not standing in the state that matches their handset when they call home. There is only one true jurisdiction of any call. You can't incorrectly bill those calls where the originating caller is on a wireless handset, and is roaming out of state when they call home. Just like you wouldn't want to underbill a MOU where the caller is roaming out of state and calls a local number there. You are billing those incorrectly as Interstate calls. Sprint knows the correct location. Sprint can tell exactly what switch the call came in on, and therefore, allow you to see just how many MOUs are being mis-jurisdictionalized each month. We can share that data with you, and you can take it back to compare to your records. There may be other factors impacting the billed PIU, outside of cellular roaming, however we won't know that until we research the issue. Sprint disputing each month, and you denying us each month isn't getting us anywhere.

We had a call a few weeks ago, which I assumed would be a working session to discuss possible options to correct the billing. I was surprised it ended up being a 3-minute call for you to tell us you were denying our disputes. We need to move forward

If you'd like me to involve our legal department, I can. They have experience in implementing these wireless roaming settlements, and may be more helpful in having you understand the importance of rendering accurate billing to Sprint.

Please call me next week to set up a time to walk through possible solutions to the issue.

Thanks~  
Julie Walker  
913-315-5435

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**From:** Andrea Prickett [mailto:andreaaj@bbtel.com]  
**Sent:** Friday, March 28, 2008 4:02 PM  
**To:** Walker, Julie A [FIN]  
**Cc:** rbradley@bbtel.com  
**Subject:** Sprint

Please see attached.

Andrea J. Prickett  
Accounting Supervisor  
Brandenburg Telephone Company  
(270) 422-2121  
(270) 422-4448 fax

4/24/2008

Please update your records with my new email address.  
[andrea.j@bbtel.com](mailto:andrea.j@bbtel.com)