

COMMONWEALTH OF KENTUCKY

COPY

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 APR 25 2008

RECEIVED

PUBLIC SERVICE COMMISSION

**PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION
IN BRANDENBURG TELEPHONE COMPANY'S COUNTERCLAIM**

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c)(1), requests that the Public Service Commission of Kentucky ("the Commission") accord confidential treatment to the specific monetary amounts contained in paragraphs 11 and 20 of Brandenburg Telephone's counterclaim in the above-captioned case (the "Information").¹ In support of its motion, Brandenburg Telephone states as follows.

I. Applicable Law.

807 KAR 5:001 §7(2) sets forth a procedure by which certain information filed with the Commission may be treated as confidential. Specifically, the party seeking such confidential treatment of certain information must "[set] forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential." 807 KAR 5:001 §7(2)(a)(1).

¹ Pursuant to 807 KAR 5:001 §7(2)(a)(2), a copy of the Information, highlighted in transparent ink, is attached to the original (only) of this motion.

The Kentucky Open Records Act, KRS 61.870 et seq., exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878 provides as follows:

- (1) The following public records are excluded from the application of [the Open Records Act] and shall be subject to inspection only upon order of a court of competent jurisdiction:
 - (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

Id.

II. The Information Should Be Classified Confidential.

Read in conjunction, 807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c)(1) provide that the Commission may classify the Information as confidential if the open disclosure of the Information to the general public "would permit an unfair commercial advantage to competitors of the entity that disclosed the records." *See* KRS 61.878(1)(c)(1). For the reasons set forth below, the disclosure of the Information to the general public could "permit an unfair commercial advantage to competitors of [Sprint]." *Id.* Accordingly, the Information should be classified as confidential.

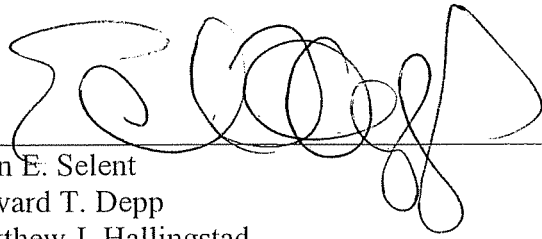
In paragraph 11 of Brandenburg Telephone's counterclaim, it specifies certain monetary amounts due monthly from Sprint to Brandenburg Telephone for unpaid switched access services provided by Brandenburg Telephone. In paragraph 20 of its counterclaim, Brandenburg Telephone specifies the total amount Sprint owes Brandenburg Telephone for unpaid switched

access services. Additionally, the Disconnect Notice attached as Exhibit B to the counterclaim contains specific monetary amounts owed to Brandenburg Telephone by Sprint.

Although Brandenburg Telephone does not know whether Sprint considers the Information confidential, it believes that the disclosure of the Information to the general public could permit an unfair commercial advantage to Sprint's competitors. Accordingly, in an abundance of caution, believing that the information contained in paragraphs 11 and 20 of the counterclaim and Exhibit B to the counterclaim may be potentially sensitive to Sprint, Brandenburg Telephone requests that the Information be treated as confidential. The disclosure of this Information to the public would provide Sprint's competitors and potential competitors with potentially confidential information regarding Sprint's financial condition. Competitors could then potentially exploit that information and gain an unfair competitive advantage. If, however, the Commission classifies the Information as confidential, Sprint's competitors will not gain unfair access to this potentially sensitive, confidential information related to Sprint's financial condition.

807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c)(1) expressly authorize the Commission to classify the Information as confidential (and thereby restrict public access to the Information) because the disclosure of the Information to the public would permit an unfair competitive advantage to competitors of Sprint. For the reasons set forth above, the disclosure of the Information could provide Sprint's competitors with an unfair competitive advantage over Sprint. Accordingly, the Commission should classify the Information as confidential pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c)(1) and, accordingly, prevent the public disclosure of the Information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Selent", written over a horizontal line.

John E. Selent

Edward T. Depp

Matthew J. Hallingstad

DINSMORE & SHOHL LLP

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500 West Jefferson Street

Louisville, Kentucky 40202

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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 25th 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

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: \$ [REDACTED] (November 16, 2007); \$ [REDACTED] (December 16, 2007); \$ [REDACTED] (January 16, 2008); \$ [REDACTED] (February 16, 2008); and \$ [REDACTED] (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 \$ [REDACTED] 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.

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

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.

March 28, 2008
Attachment

Bill Date	Amount Owed	Invoice #
1/16/08		003331-08016
12/16/07		003331-07350
11/16/07		003331-07320