

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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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
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**ANSWER OF SPRINT COMMUNICATIONS  
COMPANY L.P.**

Sprint Communications Company L. P. (“Sprint”), by counsel, submits this Answer to the Counterclaim filed by Brandenburg Telephone Company (“Brandenburg”) on April 25, 2008 (“Answer”) in response to the Complaint of Sprint filed April 10, 2008 (“Complaint”).

1. Paragraphs 1, 2, and 3 of the Counterclaim quote from Kentucky statutes that speak for themselves. To the extent paragraphs 1, 2 and 3 are legal conclusions, they require no response and are, therefore, denied.

2. Paragraph 4 of the Counterclaim incorporates by reference the admissions and denials contained in Brandenburg’s Answer and Affirmative Defenses:

a. Paragraph 11 of Brandenburg’s Answer alleges that the Percent of Interstate Use Factor (“PIU”) is applicable only insofar as it is as it is described in Brandenburg’s filed and approved tariff(s). In paragraph 12, Brandenburg alleges that, pursuant to the Duo County Tariff, it is charging access rates on properly jurisdictionalized access traffic. Sprint denies these assertions.

b. In paragraph 15 of its Answer Brandenburg admits that it is in fact determining the jurisdiction of all calls from a Sprint Nextel wireless subscriber using

“calling party number” (“CPN”) based on the geographic location of the NPA-NXX. Sprint asserts, however, this method does not determine the jurisdiction of a wireless call when the wireless customer is not in the geographic NPA-NXX location.

c. Brandenburg asserts in its Answer that it is compliant with its tariffs but it does not address the real substance of the Complaint. In Paragraph 15 of the Complaint Sprint sets forth an example of how Brandenburg is charging Sprint intrastate access rates for jurisdictionally interstate traffic. As Sprint set forth in the Complaint, assume a Sprint PCS/Nextel subscriber residing in Frankfort, Kentucky has an assigned phone number with an NPA of 502. If she uses her phone to call home while traveling in New York, Brandenburg will assign what clearly is an interstate call to the intrastate jurisdiction. Brandenburg assigns jurisdiction based solely on the 502 to 502 NPA designations.<sup>1</sup> This is the crux of the Complaint: Brandenburg denies that a New York to Kentucky call is an interstate call, at least in respect to the application of its tariffs.<sup>2</sup> Clearly such a call is interstate and Brandenburg is required to treat it as such.

d. In paragraph 16 of its Answer, Brandenburg admits that it only applies the correct PIU information provided by Sprint to the portion of traffic exchanged between Brandenburg and Sprint for which Brandenburg is unable to determine jurisdiction based on CPN. Brandenburg suggests that it only needs to use the jurisdictional report (or Sprint reported PIU) as the basis for prorating access charges between interstate and intrastate jurisdictions when it does not or cannot bill according to “actual” jurisdictional information. In essence, Brandenburg uses the PIU supplied by Sprint only when it does not have the

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<sup>1</sup> See, Answer Paragraph 13.

<sup>2</sup> See, Answer Paragraph 15.

originating and terminating number. Use of the originating and terminating number to jurisdictionalize traffic is inappropriate for wireless traffic because Brandenburg cannot determine the jurisdiction of wireless calls based on telephone number alone.

e. In paragraph 27 of its Affirmative Defenses, Brandenburg alleges Sprint has failed to join all indispensable parties. This is a misleading and irrelevant issue raised by Brandenburg to obscure the real issue in Sprint's Complaint, and to the extent this constitutes an allegation, Sprint denies it. Brandenburg argues that under its authorized tariffs it bills a non-traffic sensitive revenue ("NTSR") component. Brandenburg suggests that if Sprint is successful in its prosecution of this Complaint, the application of this component will necessarily result in a corresponding increase to the NTSR amounts that Brandenburg charges all carriers, including Sprint. According to Brandenburg, because the NTSR is spread evenly across all terminating intrastate access minutes of use, 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. This argument is irrelevant to the issue at hand in this Complaint regarding Sprint's claim that Brandenburg is applying the intrastate tariffed access rate to Sprint's interstate traffic. If a call is interstate, the state tariffed access rate cannot apply and the issue presented by Brandenburg is not relevant to this determination. Brandenburg's argument may call into question the lawfulness or fairness of its intrastate tariff and may even suggest that a generic Commission investigation of Brandenburg's tariffs is appropriate, but such action is necessarily independent of this formal complaint proceeding involving Brandenburg's specific charges to Sprint.

f. In paragraph 28 of its Affirmative Defenses, Brandenburg alleges Sprint has suffered no damages entitling it to relief. To the extent this constitutes an allegation, Sprint

denies it. At the same time Brandenburg argues that other parties may be adversely impacted by the Complaint with increased payment to Brandenburg, it contradicts itself by this second related argument that Sprint has suffered no damages entitling it to relief. The argument is based on the same NTSR component of Brandenburg's intrastate tariff. Brandenburg argues that because the NTSR is based on a fixed revenue requirement, any money Sprint may avoid paying for interstate access charges will ultimately be recovered in the form of the higher NTSR rates which will negate any financial gain that Sprint may believe is obtainable with respect to its charges at issue in this Complaint. Thus, Brandenburg is asserting that it is irrelevant whether the actual jurisdictional information that is available for the traffic (Sprint PIU) is used with respect to determining Sprint access payments because the amount of money collected by Brandenburg from Sprint will be the same as under Brandenburg's present practice of billing based on CPN. Unfortunately for Brandenburg, this is inconsistent with its first argument regarding indispensable parties because if it is true that Sprint's access payments will not change; neither will those of other parties. These NTSR-based arguments are intended only to obscure the true issue in this case and the allegations are denied by Sprint.

3. Sprint denies the allegations contained in paragraph 5 of the Counterclaim. For the reasons set forth in Sprint's Complaint, the subject charges were not properly billed to Sprint because intrastate tariffed rates have been unlawfully applied to interstate traffic.

4. Sprint admits the allegations in paragraph 6 of the Counterclaim.

5. Sprint denies the allegations in paragraph 7 of the Counterclaim. Further, to the extent Brandenburg relies on its tariff as a justification to improperly determine the jurisdiction of the subject traffic and charge intrastate access rates for interstate traffic, Sprint

denies the allegation that such a justification is valid or lawful.

6. Paragraph 8 of the Counterclaim quotes from Section 2.3.12 of the Duo County Tariff and the quoted language speaks for itself and requires no admission or denial. Sprint denies that the quoted language permits Brandenburg to utilize originating and terminating telephone numbers as a means of “billing according to actuals by jurisdiction” for wireless traffic and failing to use the actual PIU data provided by Sprint, thereby improperly determining the jurisdiction of the subject traffic and improperly assessing intrastate access rates on interstate traffic.

7. Paragraph 9 of the Counterclaim sets forth a various portions of Section 2.3.11 of the Duo County Tariff. The quoted language speaks for itself and requires no admission or denial. Sprint denies that the quoted language permits Brandenburg to utilize originating and terminating telephone numbers as a means of billing regardless of the originating location of the call. Controlling is Section 2.3.11 (C) (1), Original Page 2-20, which states:

Pursuant to Federal Communications Commission Order FCC 85-145 released April 16, 1985, interstate usage is to be developed as though every call that enters a customer network at a point within the same state as that in which the called station (as designated by the called station telephone number) is situated is an intrastate communication and every call for which the point of entry is a state other than that where the called station (as designated by the called station telephone number) is situated is an interstate communication.

Sprint is the “customer”. When a wireless call enters Sprint’s network in a state other than Kentucky, it must be treated as interstate when terminated to Brandenburg in the state of Kentucky regardless of the NPC-NXX of the calling party.

8. Sprint denies the allegations in paragraph 10 of the Counterclaim. Brandenburg cannot use CPN to determine the jurisdiction of a wireless call. By characterizing use of CPN as a means to “determine actuals by jurisdiction” it is attempting to legitimize its practice of

improperly determining the jurisdiction of wireless calls.

9. Sprint denies the allegations in paragraphs 11, 12 and 13 of the Counterclaim. To the extent Brandenburg relies on its tariff as a justification to improperly determine the jurisdiction of the subject traffic and charge intrastate access rates for interstate traffic, Sprint denies the allegation that such a justification is valid or lawful. Brandenburg cannot determine the jurisdiction of wireless calls based on telephone number alone. Assuming Brandenburg cannot determine the originating and terminating telephone numbers for 15% of the traffic, it means Brandenburg uses the PIU supplied by Sprint on only 15% of the traffic. The remaining 85% of the traffic, for which Brandenburg can determine the originating and terminating numbers, is rated according to telephone number alone, meaning that for 85% of the traffic the jurisdiction has been improperly determined.

10. Sprint denies the allegations in paragraph 14 of the Counterclaim.

11. Sprint admits the allegation in the first sentence of paragraph 15 of the Counterclaim regarding participation in a conference call to discuss billing of switched access charges but denies the allegation in the second sentence that the charges Sprint disputes were properly billed by Brandenburg.

12. Sprint denies the allegations in paragraph 16 of the Counterclaim.

13. Sprint admits the factual allegations in paragraphs 17 and 18 but denies that the Brandenburg response to Sprint's dispute is correct or lawful.

14. Sprint denies the allegation in paragraph 19 of the Counterclaim.

15. Sprint admits the factual allegations in paragraphs 20, 21 and 22 but denies Brandenburg has a valid basis for disconnection based on Sprint's Complaint.

16. Sprint denies the allegation in paragraph 23 of the Counterclaim.

17. Paragraph 24 is a legal conclusion reached by Brandenburg that requires no response and is, therefore, denied.

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

19. All allegations made in the counterclaim that are not specifically admitted herein are denied.

### **AFFIRMATIVE DEFENSES**

20. The Counterclaim fails to state a claim upon which relief can be granted.

21. Brandenburg's charges for switched access services that are the subject of Sprint's Complaint are inappropriate and unlawful under Kentucky and federal law.

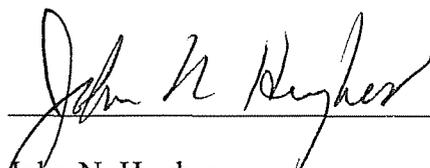
22. Brandenburg's method of "billing according to actuals by jurisdiction" set forth in its tariff and used as the basis for the charges it seeks to recover in its Counterclaim is unlawful and invalid and improperly determines the jurisdiction of wireless traffic.

WHEREFORE, Sprint requests that the Commission take the following actions:

1. Deny Brandenburg's Counterclaim;
2. Order Brandenburg to accept Sprint's PIU factor and adjust its access charges to Sprint accordingly and consistent with Sprint's Complaint;
3. Grant to Sprint such other and further relief as the Commission deems just and proper.

Submitted this 5<sup>th</sup> day of May, 2008,

SPRINT COMMUNICATIONS COMPANY L.P.

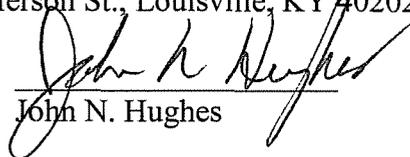


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Certificate of Service:

I certify that a copy of this Answer was mailed to John Selent and Edward Depp, Dinsmore & Shohl, 1400 PNC Plaza, 500 West Jefferson St., Louisville, KY 40202 the 5<sup>th</sup> day of May, 2008.



John N. Hughes