

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	)	

ORDER TO SATISFY OR ANSWER

Brandenburg Telephone Company ("Brandenburg") is hereby notified that it has been named as defendant in a formal complaint and request for expedited relief filed on April 10, 2008, a copy of which is attached hereto as Appendix A.


IT IS THEREFORE ORDERED that:

1. Pursuant to 807 KAR 5:001, Section 12, Brandenburg shall satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.
2. Pursuant to 807 KAR 5:006, Section 11, Brandenburg shall not terminate services to the complainant which are the subject of this dispute during the pendency of this matter.
3. Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 15<sup>th</sup> day of April, 2008.

By the Commission

ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2008-00135 DATED APRIL 15, 2008

RECEIVED

APR 10 2008

PUBLIC SERVICE  
COMMISSION

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-
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**COMPLAINT OF SPRINT COMMUNICATIONS COMPANY L.P.  
AGAINST BRANDENBURG TELEPHONE COMPANY AND REQUEST FOR  
EXPEDITED RELIEF**

Pursuant to Kentucky Revised Statutes ("KRS") Section 278.040, Sprint Communications Company L. P. ("Sprint") brings this Complaint against Brandenburg Telephone Company ("Brandenburg") for the unlawful imposition of access charges. Sprint requests that the Commission issue an expedited Ruling prohibiting Brandenburg from terminating service to Sprint during the pendency of this Complaint.

**PARTIES**

1. Sprint Communications Company L. P. ("Sprint"), a Delaware limited partnership, is a competitive local exchange carrier under the Act, and an interexchange carrier, and is authorized by the Kentucky Public Service Commission ("Commission") to provide telecommunications service in Kentucky. Sprint's principal place of business is 6200 Sprint Parkway, Overland Park, Kansas 66251.

2. Sprint terminates long distance Commercial Mobile Radio Service ("CMRS") traffic on behalf of Sprint Spectrum Limited Partnership, a Delaware limited partnership, as agent and General Partner for WirelessCo, L.P. a Delaware limited partnership, and SprintCom, Inc., a Kansas corporation, all the foregoing entities jointly d/b/a Sprint PCS ("Sprint PCS").

Sprint also terminates CMRS traffic on behalf of Nextel West Corp. and NPCR, Inc.

(collectively "Nextel") which are both Delaware corporations. Sprint PCS and Nextel are CMRS providers licensed by the Federal Communications Commission ("FCC") to provide wireless services in Kentucky.

3. The name and address of Sprint's representative in this proceeding is as follows:

John N. Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, Kentucky 40601  
(502) 227-7270 (o)  
(502) 875-7059 (fax)

4. Brandenburg Telephone Company, a Kentucky corporation, is an incumbent local exchange carrier ("ILEC") as defined under Section 251(h) of the Communications Act of 1934, as amended ("Act"), and is certified to provide telecommunications services in the Commonwealth of Kentucky. Brandenburg's principal place of business is 200 Telco Drive, P.O. Box 599, Brandenburg, Kentucky 40108.

5. The names, addresses, and contact information for Brandenburg's current primary legal representatives during negotiations with Sprint are:

John E. Selent  
Edward T. Depp  
Holly C. Wallace  
DINSMORE & SHOHL LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

#### **JURISDICTION**

6. Pursuant to KRS Section 278.040, the Commission has jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

7. Pursuant to KRS Section 278.260, the Commission is vested with the express

authority to investigate and remedy "complaints as to rates or service of any utility."

8. Pursuant to KRS Section 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."

9. Subsection (2) of KRS Section 278.030 allows a utility to "employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates."

### FORMAL COMPLAINT

10. The regulatory scheme set forth in the Act, the Kentucky statutes, the rules of the FCC and the rules of this Commission requires the identification of communications that use access service as either interstate or intrastate. Once assigned to the appropriate category, charges for the communications are separately regulated under a dual regulatory regime. Thus, interstate and intrastate traffic are regulated under two separate but parallel regimes by different agencies – the FCC for interstate communications and this Commission for intrastate communications.

11. The FCC has concluded and virtually all states have agreed to a regime that where both state and federal jurisdictions use a per-minute-of-use rate structure and rely on jurisdictional allocation of usage for billing, the interstate and intrastate minutes of use on these facilities must be identified in some compatible way to permit LECs to assess their customers the proper access charges.<sup>1</sup> The common practice in the industry for the allocation of access communication is the use factor known as the Percent of Interstate Use ("PIU") factor. This is the method outlined in both interstate and intrastate tariffs.

12. Brandenburg has been violating and continues to violate KRS Sections 278.040,

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<sup>1</sup> See, e.g., *Declaratory ruling. In The Matter of Thrifty Call, Inc.*, 2004 WL 2578216 (F.C.C.), 19 F.C.C.R. 22,240, 19 FCC Rcd. 22,240 (2004).

278.260 278.030(1), and 278.030 as well as Sections 201(b) and 203 of the Act, 47 USC §§201(b) and 203, by inappropriately and unlawfully charging Sprint intrastate access rates for terminating jurisdictionally interstate traffic from wireless phones. These rates are unreasonably high when misapplied to jurisdictionally interstate traffic and are not set forth in Brandenburg's interstate tariff. The access rates that Brandenburg seeks to impose upon Sprint for terminating such traffic are those set forth in their intrastate tariffs.

13. To determine the jurisdiction of a call placed from a wireline phone over a Feature Group D ("FGD") access line for purposes of assessing access charges, a local exchange carrier ("LEC"), and in this case Brandenburg, compares the calling party number ("CPN") with the number of the called party. This method is based upon the well-established principle that the beginning and end points of a communication determine whether the call is interstate or intrastate.<sup>2</sup>

14. Brandenburg also compares the CPN to the called number to assign the jurisdiction of a wireless call. But such comparison can not be relied upon to accurately determine the jurisdiction of a wireless call. This is so because although a wireless customer's telephone number is usually based on the location of the customer's home or business, the mobility afforded by wireless phones and the fact that wireless carriers, such as Sprint PCS/Nextel, have built nationwide networks enable wireless subscribers to make calls from virtually anywhere in the United States.

15. The CPN used by Brandenburg for a call from a Sprint PCS/Nextel subscriber to one of Brandenburg's customers represents the geographic location of the NPA-NXX originally assigned to the PCS/Nextel phone itself, and does not represent the physical location of the

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<sup>2</sup> See, e.g., *Teleconnect Company v. The Bell Telephone Company of Pennsylvania et al.*, 6 FCC Rcd 5202, 5206 (1991).

Sprint PCS/Nextel subscriber and the phone at the time a call is made and thus the geographic location at which the wireless call enters Sprint PCS's/Nextel's network ("Traveling Call Traffic"). By way of example, a Sprint PCS/Nextel subscriber residing in Frankfort, Kentucky could be assigned a 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. And because Sprint long distance will have transported the call on behalf of Sprint PCS/Nextel to the appropriate Brandenburg serving wire center, Brandenburg will bill Sprint its higher intrastate access charges for terminating the call instead of its interstate access rates set forth in National Exchange Carrier Association ("NECA") tariffs on file with the FCC.

16. Historically, Sprint has always provided a PIU factor on a quarterly basis to Brandenburg to reflect the actual jurisdiction of the traffic Sprint terminates. Brandenburg has failed to utilize the Sprint PIU factors as provided to determine the correct allocation of Sprint's traffic. Brandenburg only applies the PIU information provided by Sprint, if at all, to the small portion of traffic that is not identified by Brandenburg's incorrect reliance on the originating CPN. Sprint first brought this matter to Brandenburg's attention when Sprint provided to Brandenburg a Detail of Claims report in November, 2007. At this time Sprint filed its dispute with Brandenburg which explained the PIU discrepancy. The PIU is a factor used to determine the amount of traffic to be billed at the interstate rate and the amount to be billed at the intrastate rate. It was clear that Brandenburg was misclassifying traffic as intrastate and thus billing a disproportionate amount at the higher intrastate rate rather than the appropriate interstate rate.

17. Sprint understands that Brandenburg concurs in the Duo County Telephone Cooperative Corp., Inc. PSC KY NO. 2A, for intrastate access services. That tariff provides in



pertinent part:<sup>3</sup>

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements (Cont'd)

(C) Jurisdictional Reports - Switched Access (Cont'd)

(3) Feature Groups C and D (Cont'd)

When originating call details are insufficient to determine the jurisdiction for the call, the customer 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. The projected intrastate percentage of use will be obtained by subtracting the projected interstate percentage for originating and terminating minutes from 100 (intrastate percentage = 100 - interstate percentage).

In a conference call held on February 6, 2008, Sprint explained the impact of Traveling Call Traffic and the impact this was having on Sprint's billed PIU's. Sprint also provided Brandenburg information showing the amount that Brandenburg had overbilled Sprint as of that point in time.

18. Brandenburg denied Sprint's claim because of a belief that Brandenburg was billing Sprint's in accordance with NECA FCC Tariff No. 5. Subsequent efforts by Sprint to reach a settlement of this matter with Brandenburg have been unsuccessful. By letter dated March 28, 2008, a copy of which is attached as Attachment 1, Brandenburg has threatened to terminate services to Sprint which will result in substantial harm to Sprint's operations and customers in Kentucky.

19. Plainly, Brandenburg's alleged reliance on a standard practice set forth under NECA Tariff No 5, even if true -- and Sprint would note that Brandenburg does not provide any

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<sup>3</sup> Duo County Telephone Cooperative Corp., Inc. PSC KY NO. 2A, Original Page 2-23, Section 2.3.11 (C) (3), Issued: September 20, 1999 Effective: November 1, 1999.

proof that all LECs employ such practice to determine the jurisdiction of wireless calls terminating to their customers -- can not be relied upon to justify a clear misapplication of the correct jurisdictional billing.

20. Sprint asserts that NECA FCC Tariff No 5 contains no such requirement. The Tariff provides that calls going from one state to another state constitutes interstate traffic. This is reflected in the NECA tariff as follows:<sup>4</sup>

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report and Certification Requirements  
(Cont'd)

(C) Jurisdictional Reports - Switched Access (Cont'd)

(1) Percentage of Interstate Use (PIU)

(a) For purposes of developing the projected interstate percentage for Feature Group C or Feature Group D, **the customer shall consider every call that originates from a calling party in one state and terminates to a called party in a different state to be interstate communications.** The customer shall consider every call that terminates to a called party within the same state as the state where the calling party is located to be intrastate communications. The manner in which a call is routed through the telecommunications network does not affect the jurisdiction of a call, i.e., a call between two points within the same state is an intrastate call even if it is routed through another state. (emphasis added)

This language could not be any clearer. Thus, Brandenburg has misapplied its intrastate rates.

Brandenburg is treating the call as though the number controls, even if the number is not reflective of the call location.

21. The FCC has made this same finding. The FCC has made clear that the jurisdiction was not determinate by number alone. The issue is clearly addressed in the First Report and Order where the FCC states at paragraph 1044:

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<sup>4</sup> National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Original Page 2-18.2, Section 2.3.11(C)(1)(a), Issued: June 3, 2003, Effective: June 18, 2003.

1044. CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination rate or access charge. We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows and the applicability of transport and termination rates, given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges. We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples. For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer. As an alternative, LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.<sup>5</sup>

The application of existing law to the issue raised in Sprint's Complaint requires a finding that a call that originates in one state and terminates in another is an interstate call for which interstate access charges should be assessed.

## CONCLUSION

22. For the period covered by this complaint, i.e., the period beginning March 1, 2006 to the present, Brandenburg's unlawful charges amount to approximately \$926,250. This amount is based upon Sprint's PIU factor which appropriately accounts for the jurisdiction of wireless calls carried over Sprint's long distance network and delivered to Brandenburg for termination. Brandenburg has refused to apply Sprint's PIU factor because of its reliance upon the CPN/called number method for determining jurisdiction. Sprint requests that Commission find that Brandenburg is required to accept Sprint's PIU factor and adjust its access charges to

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<sup>5</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, 15680, para. 359 (1996) (Local Competition First Report and Order), aff'd in part and vacated in part sub nom., *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

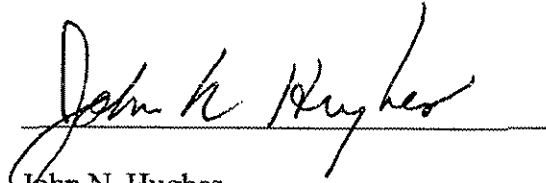
Sprint accordingly.

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

1. Expedite its ruling in this matter in light of the substantial harm that Sprint faces from the impending threat of service termination by Brandenburg, and order Brandenburg to accept Sprint's PIU factor and adjust its access charges to Sprint accordingly;
2. Order Brandenburg to refrain from terminating services to Sprint and to refrain from making any further threats during the pendency of this Complaint;
3. Grant to Sprint such other and further relief as the Commission deems just and proper.

Submitted this 10th day of April, 2008.

SPRINT COMMUNICATIONS COMPANY L. P.

A handwritten signature in cursive script, reading "John N. Hughes", is written over a horizontal line.

John N. Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, Kentucky 40601  
(502) 227-7270 (o)  
(502) 875-7059 (fax)

Attorney for Sprint

**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.:** [REDACTED], [REDACTED] and [REDACTED]

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.**

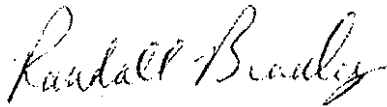
**Amounts owed for unpaid balances total \$96,660.**

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@bbtel.com](mailto:andrea@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	[REDACTED]
12/16/07	\$24,133.90	[REDACTED]
11/16/07	\$50,303.10	[REDACTED]