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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. 2008-00135

**RESPONSE TO BRANDENBURG'S REPLY
AND MOTION FOR EMERGENCY ORAL ARGUMENT**

Sprint Communications Company L.P. ("Sprint"), by counsel, provides this brief response to the Reply filed by Brandenburg Telephone Company ("Brandenburg") on March 3, 2009 and also to Brandenburg's Motion for Emergency Oral Argument, filed on March 5, 2009. The Commission should deny Brandenburg's motion to compel payment and request for oral argument and set this case for hearing on the merits of Sprint's complaint.

Brandenburg has attempted to put Sprint's financial position at issue in this proceeding and not the merits of their arguments, or lack of arguments, on the appropriate jurisdiction of the traffic in dispute. They have selectively chosen inflammatory or one-sided published pieces in this endeavor which cannot be considered anything more than an attempt to divert attention away from the real issues. Sprint's financial situation is simply not an issue appropriately before this Commission for determination or comment. Furthermore it would be inappropriate for Sprint to attempt to rebut the allegations regarding its financial condition in this forum in light of the securities regulations dealing with the disclosure of financial information. Suffice it to say that at the end of 2008, Sprint publicly reported that it had \$3.7 billion in cash on hand. This is more than sufficient to address Brandenburg's claims in this proceeding.

Sprint has already clearly explained its position on the facts and the law. *See Response of Sprint Communications Company L.P. To Emergency Motion to Compel Payment of Access Charges*. Sprint has significantly overpaid Brandenburg and is withholding disputed amounts as specifically allowed by the applicable intrastate tariff and Kentucky law. *Id.* at ¶¶ 1-2. Despite this clarity, Brandenburg continues to misrepresent Sprint’s position, saying over and over again that the amounts at issue are “undisputed.” *Brandenburg Telephone Company’s Reply to Sprint Communications Company’s Opposition to Brandenburg Telephone’s Motion to Compel Payment* at pp. 1-9.¹ Brandenburg should not be allowed to create confusion where none exists – the amounts held are disputed.

Kentucky law, including the Duo County Tariff, clearly provides Sprint the right to withhold disputed amounts as the parties proceed in this action. Brandenburg contrary to law wants the Commission to determine that any bills it sends to a customer, regardless of how high or how incorrect, must be paid in full during dispute resolution or else the customer can be disconnected and have judgment entered against it. This would be absurd from a public policy standpoint, would render § 2.4.1 of the Duo County Tariff meaningless, and would be utterly inconsistent with 807 KAR 5:006, Section 11. *See also In the Matter of Bellsouth Communications, Inc.’s Notice of Intent to Disconnect Southeast Telephone, Inc. for Nonpayment*, Case No. 2005-00519 (Dec. 16, 2005) (finding 807 KAR 5:006, Section 11 to authorize carrier to withhold payment of disputed amounts pending Commission resolution). Brandenburg’s tariff allows Sprint to withhold the disputed amounts. Brandenburg is seeking to modify its tariff in the course of this proceeding, which is patently unlawful.

¹ Brandenburg improperly represents on every page of its reply – a total of more 20 times – that these charges are “undisputed.”

Brandenburg also relies on a Sixth Circuit Case that provides it with no support. *Cincinnati Bell Telephone Company v. Allnet Communication Services, Inc.* (“Court Case”) involved a complaint by Allnet concerning the reasonableness of the rates in effect under the federal tariff for Cincinnati Bell. The complaint at issue was brought in federal court by Cincinnati Bell against Allnet. Correspondingly there was a complaint by Allnet brought against Cincinnati Bell at the Federal Commission (“FCC”, the “FCC Case”). The two matters proceeded concurrently.

The key issues relevant to the determinations made in the Court Case were based on matters simply not present in this proceeding. First the appropriate rate level was the disputed matter in the Allnet cases, not the determination of the appropriate jurisdiction of the traffic in dispute. When the court determined to give deference to the rate in effect for Cincinnati Bell, it was in this context. Here, Brandenburg is applying intrastate rates to interstate traffic. There is no justification for allowing deference in this context.


In addition, the court determined that Allnet was precluded in the Court Case from seeking a counter-claim against Cincinnati Bell because such a claim would be in conflict with *47 U.S.C. § 207*, which provides that any person claiming to be damaged by any common carrier subject to the provisions of the Act may *either* make complaint to the FCC or may bring suit for the recovery of damages in any district court - but not both. Because Allnet chose to pursue its remedy with the FCC, the court applied this statute to determine Allnet could not seek such a remedy in district court. Interestingly, by the time the Court of Appeals ruled on whether Allnet

could pursue its counterclaim, the FCC had already awarded offset damages to Allnet in the FCC case.²

Finally, Brandenburg has asked for "Emergency Oral Argument." Sprint does not believe such argument is necessary, or constitutes an efficient use of either the Commission's or parties' resources. The better and much more efficient course of action would be for the Commission to deny oral argument, deny the motion to compel payment, and set a hearing on the merits of Sprint's complaint. In this regard Sprint has discovery that was filed with the Commission on February 9th to which Brandenburg has yet to respond.

Submitted this 13th day of March, 2009.

SPRINT COMMUNICATIONS COMPANY L. P.


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

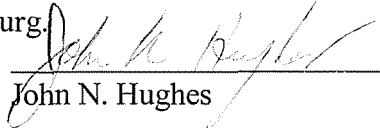
Douglas F. Brent
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
502 333 6000
502 568 5734 direct

Attorneys for Sprint

² In the Matter of Allnet Communication Services, Inc., Complainant, v. The Bell Atlantic Telephone Companies, and Cincinnati Bell Telephone Company, Defendants, File No. E-91-112; File No. E-92-021, Release Number: FCC 93-62, 8 FCC Red 1347; 1993 FCC LEXIS 1134, March 5, 1993 Released; Adopted January 29, 1993.

CERTIFICATE OF SERVICE

I certify that this pleading has been served the 13th day of March, 2009 day by mailing to John Selent, Dinsmore & Shohl, 1400 PNC Plaza, Louisville, KY 40202, counsel for Brandenburg.



John N. Hughes