



S T O L L · K E E N O N · O G D E N
P L L C

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

DOUGLAS F. BRENT
DIRECT DIAL: 502-568-5734
douglas.brent@skofirm.com

April 20, 2009

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**PUBLIC SERVICE
COMMISSION**

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

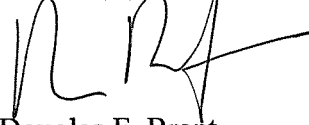
Re: **Complaint of Sprint Communications Company LP Against Brandenburg
Telephone Company and Request for Expedited Relief**
Case No. 2008-00135

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Sprint Communications Company, L.P.'s Petition for Confidential Treatment of Certain Information Denied Protection by Letter of the Executive Director. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our runner.

Should you have any questions please contact me at your convenience.

Sincerely yours,



Douglas F. Brent

DFB:jms

Enclosures

cc: Parties of Record
John N. Hughes
Philip R. Schenkenberg

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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)	

SPRINT'S PETITION
FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION
DENIED PROTECTION BY LETTER OF THE EXECUTIVE DIRECTOR

Sprint Communications Company, L.P. ("Sprint"), for its Petition for Confidential Treatment of Certain Information Denied Protection by Letter of the Executive Director, pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), states as follows:

BACKGROUND

By this Petition, Sprint requests that the Public Service Commission ("Commission") grant confidential protection to certain information that is confidential and proprietary and that pertains to fully competitive aspects of Sprint's business. Specifically, Sprint petitions the Commission to grant confidential protection to the confidential and proprietary portions of the Sprint Percentage of Interstate Usage ("PIU") summary (Exhibit DR-2, filed as TAB 2 to Sprint's Response to the Commission Staff's Data Request). Attached herewith is a copy of Exhibit DR-2 with confidential and proprietary portions highlighted.

When the referenced information was initially provided in this case, Sprint filed a Petition for Confidential Treatment requesting protection of the entirety of Exhibit DR-2. On March 31, 2009, the Executive Director issued a letter denying the request, stating that the information in TAB 2 produced in response to Commission staff's oral request at an informal

conference “is a summary of a study and therefore not of a confidential nature.” Letter from Jeff Derouen to John Hughes at 2. Respectfully, the letter understates and mischaracterizes the information Sprint provided and fails to acknowledge the competitive significance of the information Sprint included in its response to the Commission staff’s oral request. Sprint therefore files this Petition.

The March 31, 2009 letter stated that the information would be withheld from public inspection for 20 days. Sprint respectfully requests that the information remain protected until the Commission has either granted this petition or afforded Sprint a full hearing to justify its request for protection of the information.

GROUND FOR PETITION

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Both requirements are met here. There is actual competition, as the information in question concerns confidential and proprietary information related to the interexchange services and wireless telecommunications business, which are among the most highly competitive utility services subject to the Commission’s jurisdiction. Sprint is an interexchange carrier and its affiliate provides wireless services in Kentucky. Competitors providing identical services are not required to disclose the types of information requested by, and filed with, the Commission in this case. The confidential business information disclosed to the Commission in this case is the type

of information which would enable Sprint's competitors to discover, and make use of, confidential information concerning Sprint's costs to terminate traffic not only to exchanges of Brandenburg Telephone Company, but to other exchanges in the state, all to the unfair competitive disadvantage of Sprint.

2. Specifically, the information provided under Tab 2 in the response to Staff is a Traffic Study Analysis prepared by Sprint that compares PIU methodologies applied by Sprint and Brandenburg Telephone Company. Critically, the study discloses the exact number of minutes of use terminating from the Sprint network to Brandenburg's end offices during a specific time period. The study also discloses the PIU factor calculated by Sprint using the methodology described in the Exhibit, comparing it to the PIU factor derived by Brandenburg Telephone Company using a different methodology. Finally, the study discloses what Sprint believes is its *exact terminating access cost* for calls handled by Brandenburg Telephone Company, calculated with reference to tariffed rates for switched access services.

3. The Traffic Study Analysis was based upon a very large data set. As a statistical matter, competitors interested in estimated Sprint's market share, traffic mix, and gross margins could use this Traffic Study Analysis to extrapolate data concerning Sprint's operations and profitability elsewhere. Assuming the PIU factor in the Traffic Study Analysis would be a reliable factor to apply elsewhere, competitors could estimate Sprint's costs of network termination and origination in other areas of the state. Since the other input to determine switched access expense per minute is the access rate itself, which as a matter of law is published, Sprint's PIU factor is the key to estimating its access costs. Anyone with the PIU can make an inference to estimate Sprint's costs. Such an estimate could be valuable to any

interexchange carrier that competes with Sprint either as a retail provider of long distance services or as a wholesale provider to termination services to other carriers.

4. The information for which confidential treatment is sought is maintained internally by Sprint. This information is not on file with the FCC, SEC or other public agency, is not available from any commercial or other source outside of Sprint, and is limited in distribution to those employees who have a business reason to have access to such information. Sprint does not expect to learn about its competitors' network costs by reviewing records at the Commission. Neither should Sprint be expected to furnish that information to its competitors by virtue of having responded to a staff request. Further, the public interest to be served by its disclosure is minimal at best. By imposing unfair competitive injury upon Sprint, disclosure in fact harms the public interest.

5. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of

privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” The same reasoning applies here.

6. In 96-ORD-176, the Office of the Attorney General found that a municipal utility could properly deny a request for billing records that could be used to infer a customer’s “competitive position.” The Commission cited that opinion with approval when it granted BellSouth’s request to protect information concerning the amount of money involved in a billing dispute with another utility. In *SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 2005-00053 (Order dated March 31, 2006), the Commission noted the need to balance the competing interests of privacy and the public’s interest in [government] transparency, citing Kentucky cases stating that questions about “clearly unwarranted” invasions of privacy are “intrinsically situational” and must be determined within a specific context. The context is clear here: the Traffic Analysis filed as TAB 2 would likely be of great interest to Sprint’s competitors, and likely of no interest to anyone else. Thus, protection of the data would not undermine the purpose of the Open Records Act, which is primarily to inform the public as to whether government agencies are properly executing their statutory functions. As the Commission put it in *SouthEast Telephone*, “this aim is not fostered by disclosure of information about private citizens accumulated in various government files that reveals little or nothing about an agency’s own conduct. *Id.* at 4, citing *Hines v. Com., Dept. of Treasury*, 41 S.W. 39 872 (Ky. App. 2001).

7. As shown above, disclosure of the values and factors in Sprint’s Traffic Study Analysis would enable competitors to infer or suggest the competitive position of Sprint, to

Sprint's unfair competitive disadvantage. Thus, the Commission should protect the confidential portions of the information provided in response to the requests of Commission Staff. Those portions demonstrate on their face that they merit confidential protection pursuant to *Hoy, Marina Management*, and KRS 61.878(1)(c)1. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Sprint and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

8. In accordance with the provisions of 807 KAR 5:001(7), Sprint files herewith (1) set of the confidential information provided in Sprint's response to Staff's oral request on July 17, 2008 in redacted form for filing in the public record.

CONCLUSION

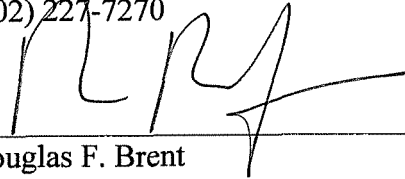
For the reasons stated, Sprint respectfully requests that the Commission grant confidential protection for the information at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: April 20, 2009

Respectfully submitted,

By:

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



Douglas F. Brent
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 333-6000
(502) 627-8722 (fax)

Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 IDS Center
Minneapolis, MN 55402
(612) 977-8246
(612) 977-8650 (fax)

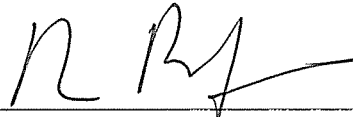
Counsel for Sprint Communications Co., L.P

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Petition was served upon the following persons by first class United States mail, postage prepaid, on the 20th day of April, 2009:

John E. Selent
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
Counsel for Brandenburg Telephone Co.

J. D. Tobin, Jr.
President / Manager
Brandenburg Telephone Company, Inc.
200 Telco Road
P. O. Box 599
Brandenburg, KY 40108



Counsel for Sprint Communications Co., L.P.