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July 27, 2009

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JUL 27 2009

**PUBLIC SERVICE
COMMISSION**

HAND FILED

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 ("Sprint") response to a motion to amend the procedural schedule filed today by Brandenburg Telephone Company. In addition, Sprint is filing a Motion to Compel Brandenburg Telephone Company to respond to certain Sprint data requests. In light of the rapidly approaching hearing date we request that the Commission give prompt attention to the Motion to Compel.

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.

Sincerely yours,

Douglas F. Brent

DFB:jms
Enclosures

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

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JUL 27 2009

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 AND REQUEST FOR EXPEDITED RELIEF	Case No. 2008-00135
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SPRINT'S RESPONSE TO MOTION TO AMEND PROCEDURAL SCHEDULE

Sprint Communications Company L. P. ("Sprint") hereby responds to Brandenburg Telephone Company's ("Brandenburg Telephone") July 27, 2009 Motion to Amend Procedural Schedule. That motion requests that the Commission extend the date for filing rebuttal testimony by one week, until after a Brandenburg Telephone executive has returned from a foreign vacation. As explained below, Sprint opposes the motion insofar as it will prejudice Sprint's ability to prepare for hearing. Accordingly, if the Commission is inclined to grant Brandenburg Telephone's motion, it should also move the hearing date to the next available hearing date that will accommodate the schedules of the witnesses and counsel, preferably on or before September 4, in order to ensure that Sprint is not prejudiced by the delay Brandenburg Telephone is seeking.

Brandenburg Telephone's motion, which states that Sprint has "refused" to consent to any extension beyond August 4, is obviously untimely in light of the admission within that the vacation was planned "long prior" to the issuance of the procedural schedule on June 30, 2009. Brandenburg Telephone could have brought the conflict to the Commission's attention before the parties began sending discovery and filing their testimony. Instead, Brandenburg Telephone waited until after it had a chance to review direct testimony before launching its motion and

attempting to blame Sprint for the difficulties arising from the executive's vacation.

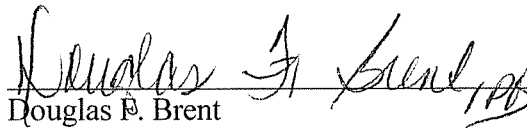
What Brandenburg Telephone does not mention is that counsel for Sprint met with counsel for Brandenburg Telephone in Frankfort on July 2, 2009 to discuss scheduling matters. At that meeting Sprint asked Brandenburg Telephone's counsel whether Brandenburg Telephone would agree to request a change in discovery, testimony and hearing dates in light of the extremely compressed schedule for prefiled testimony and discovery. Five days later, Brandenburg Telephone's counsel informed Sprint that it would not agree to a change. Since Brandenburg Telephone would not agree to a change in the hearing date, Sprint did not request one, and determined to work within the schedule the Commission had ordered. Of course, when refusing Sprint's request Brandenburg Telephone's counsel would have been aware of any pending conflict arising from Ms. Willoughby's travels. Yet, no motion was filed until after Sprint filed its direct testimony.

As Brandenburg Telephone concedes, Sprint did agree to extend the due date for rebuttal testimony by several days. Sprint would not, however, agree to receive rebuttal testimony on the Friday before a hearing the following Tuesday. Sprint's witnesses and counsel will spend most of Monday, August 10 travelling from at least three different states to Frankfort. For Sprint to effectively present its position to the Commission, these individuals need time *together* prior to hearing. Receipt of the testimony late on a Friday before a Tuesday hearing makes this impossible and is simply unfair to Sprint. Sprint takes Brandenburg Telephone at its word that the vacation will interfere with Ms. Willoughby's ability to prepare rebuttal testimony. But it is not reasonable to make Sprint solve Brandenburg Telephone's scheduling issue by forgoing its own hearing preparation. Under the circumstances, an appropriate solution is to grant the motion and move the hearing date to the next available hearing date that will accommodate the

schedules of the witnesses and counsel, preferably on or before September 4. Otherwise, the untimely motion should be denied.

Respectfully submitted this 27th day of July, 2009.

SPRINT COMMUNICATIONS COMPANY L. P.



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Attorneys for Sprint

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Response was served upon the following persons by first class United States mail, postage prepaid, on the 27th day of July, 2009:

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Counsel for Sprint Communications Co. L.P.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

In the Matter of:

COMPLAINT OF SPRINT COMMUNICATIONS)	
COMPANY L.P. AGAINST BRANDENBURG)	CASE NO.
TELEPHONE COMPANY AND REQUEST FOR)	2008-00135
EXPEDITED RELIEF)	

SPRINT'S MOTION TO COMPEL

Sprint Communications Company L.P. ("Sprint") hereby moves that the Commission compel Brandenburg Telephone Company ("Brandenburg Telephone") to respond fully to Requests No. 19, 20.a, 22 and 27 in "Sprint's Third Set of Requests for Information to Brandenburg Telephone Company", filed on July 13, 2009, in the above-styled case. Set forth below are the Requests that are subject to this Motion, and an explanation as to why Brandenburg Telephone's response was deficient or why Brandenburg Telephone's objections should be denied.

While not required by the Commission's rules, the undersigned counsel for Sprint conferred by telephone with counsel for Brandenburg Telephone on Friday, July 24 to identify what Sprint asserts are deficiencies in Brandenburg Telephone's responses and to attempt to negotiate a resolution short of Sprint pursuing further legal options. Counsel for Brandenburg Telephone indicated that Brandenburg Telephone's objections and responses to the four requests in question as provided in Brandenburg Telephone's Responses filed on July 20, 2009 would not be supplemented or amended. Accordingly, Sprint has no choice but to submit this Motion and request, for the reasons discussed in

detail below, that the Commission compel Brandenburg Telephone to respond fully to Sprint's discovery.

REQUEST NO. 19

With regard to Request No. 18¹ above, please admit or deny that the call described is an interstate call.

BRANDENBURG TELEPHONE'S RESPONSE:

Brandenburg Telephone objects to the extent that the information sought in this request calls for it to draw a legal conclusion. Subject to the objection, and without waiving same, Brandenburg Telephone refers Sprint to its response to Request No. 18. This response is also intended to satisfy Request No. 12 of Sprint's Second Requests for Information to Brandenburg Telephone, dated February 9, 2009.

¹ Sprint's Request No. 18 and Brandenburg Telephone's Response read as follows:

REQUEST NO. 18

Please indicate the correct jurisdictional category, either Interstate or Intrastate, under applicable federal laws and/or regulations for the following call scenario, as well as the jurisdictional category that would be assigned to the call by Brandenburg's process to jurisdictionalize traffic exchanged within exchange carriers described in its response to Request No. 3 of Sprint's First Requests for Information to Brandenburg Telephone Company, dated August 29, 2008:

A CMRS subscriber with a handset that is assigned a Kentucky telephone number assigned in the Brandenburg service area places a call to a landline subscriber with a Kentucky telephone number assigned in the Brandenburg service area while he/she is traveling outside of Kentucky and outside of the Louisville-Lexington major Trading Area. That call is delivered by the CMRS provider to Sprint to be delivered in accordance with the applicable switched access tariffs.

BRANDENBURG'S RESPONSE

Brandenburg Telephone objects to the extent that the information sought in this request calls for it to draw legal conclusions based upon federal law and regulations. Subject to the objection, and without waiving same, Brandenburg Telephone states that it would jurisdictionalize the call as intrastate pursuant to its tariff. If the scenario were changed so that a CMRS subscriber with a handset that is assigned a telephone number from somewhere outside the state of Kentucky places a call to a landline subscriber in Kentucky while he/she is traveling inside Kentucky, that call would be jurisdictionalized as interstate. This response is also intended to satisfy Request No. 11 of Sprint's Second Requests for Information to Brandenburg Telephone, dated February 9, 2009.

SPRINT'S REQUEST TO COMPEL:

The answer provided by Brandenburg Telephone to Request No. 19 is non-responsive. Brandenburg Telephone's referral to its response to the previous question, in which Brandenburg Telephone discusses how it would jurisdictionalize the call in the scenario included in Request No. 18 does not answer Sprint's simple question posed in No. 19: is the call in question an interstate call or not? Sprint's simple question here deserves a simple and coherent response from Brandenburg Telephone. If it is Brandenburg Telephone's position, for example, that there is not enough information included in the scenario described in No. 18 for Brandenburg Telephone to answer the question in No. 19, Brandenburg Telephone should have stated so and should have identified the further information that Brandenburg Telephone, in its opinion, would need to state whether or not the call in question was interstate. Brandenburg Telephone, however, chose not to substantively answer the question at all, and Brandenburg Telephone's attempt to simply evade the question should not be permitted by the Commission.

Brandenburg Telephone's objection, i.e., that the request calls for a legal conclusion, is not well taken. The question in No. 19 relates to a hypothetical call scenario contained in Sprint's Request No. 18. Parties are allowed to pose hypothetical questions in discovery, which by definition depend upon a certain set of assumed facts. Accordingly, No. 19 does not require Brandenburg Telephone to "draw a legal conclusion" but merely respond as indicated by the set of facts contained in the hypothetical.

REQUEST NO. 20

For the purpose of responding to this request, please consider the following scenario: A Sprint Spectrum L.P. CMRS subscriber who lives within the Brandenburg Telephone service territory, and has a wireless handset that is assigned a Kentucky telephone number with an NPA of 270 (the same as wireline numbers for the Brandenburg exchange), travels from the Brandenburg service territory to New York State. The CMRS subscriber calls back to a landline customer located within the Brandenburg exchange with a landline telephone number with an NPA of 270.

- a. Is the call described an interstate call or an intrastate call?

BRANDENBURG TELEPHONE'S RESPONSE:

Brandenburg Telephone objects to the extent that this request requires it to draw a legal conclusion. Subject to the objection, and without waiving same, Brandenburg Telephone states that the call described would be classified intrastate pursuant to Brandenburg Telephone's tariff. If the scenario were changed, however, so that a Sprint Spectrum L.P. CMRS subscriber who lives in the New York state service territory, and has a wireless handset that is assigned a New York state telephone number with an NPA from New York state, travels from new York into Kentucky and makes a call to a landline customer located in the Brandenburg exchange, the call will be jurisdictionalized as interstate. This response is also intended to satisfy Request No. 13a of Sprint's Second Requests for Information to Brandenburg Telephone, dated February 9, 2009.

SPRINT'S REQUEST TO COMPEL:

Similar to its response to Request No. 19, the answer provided by Brandenburg Telephone to Request No. 20 is non-responsive. Brandenburg Telephone refuses to answer Sprint's simple question posed in No. 20: is the call described in Sprint's hypothetical an interstate call or an intrastate call? Again, Sprint's simple question here requires a simple and coherent response from Brandenburg Telephone. And for the reasons discussed above, Brandenburg Telephone's objection, i.e. that the request calls for a legal conclusion, should be overruled. Parties are allowed to pose hypothetical questions in discovery, which by definition depend upon a certain set of assumed facts. Thus, Request No. 20 does not require Brandenburg Telephone to "draw a legal

conclusion” but merely respond as indicated by the set of assumed facts contained in the hypothetical.

REQUEST NO. 22

For the years 2005, 2006, 2007 and 2008, please provide all documents that support Brandenburg’s claims that the quarterly PIU factors submitted by Sprint are invalid.

BRANDENBURG TELEPHONE’S RESPONSE

Brandenburg Telephone objects on the grounds that (i) the information sought is irrelevant and unlikely to lead to the discovery of admissible information because Brandenburg Telephone’s tariff does not require the use of PIU factors for all traffic; (ii) Brandenburg Telephone does not keep the information requested in the ordinary course of its business; (iii) the request is unduly burdensome because it seeks all documents in Sprint’s claims over a four year period; (iv) the request is premature because Sprint has failed to establish that its claim for overpayments extends to any period prior to the filing of its complaint; and (v) this request seeks confidential, proprietary information. Brandenburg Telephone further objects that his request is but an instrument in Sprint’s transparent ploy to seek a continuance of the August 11 hearing date in this matter, to Brandenburg Telephone’s significant financial detriment. Subject to these objections, and without waiving same, Brandenburg Telephone states that all responsive documents will be either attached to the testimony submitted in this case, previously provided by Brandenburg Telephone or supported by Sprint’s own records provided by it to Brandenburg Telephone. This response is also intended to satisfy Request No. 15 of Sprint’s Second Requests for Information to Brandenburg Telephone, dated February 9, 2009.

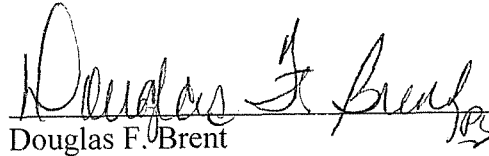
SPRINT’S REQUEST TO COMPEL:

Brandenburg Telephone’s response to Request No. 22 includes a “kitchen sink” listing of boilerplate objections, most of which are stated as bare assertions without any support for the objection provided. Brandenburg Telephone’s lead objection, i.e., that Sprint’s request for “all documents that support Brandenburg Telephone’s claims that the quarterly PIU factors submitted by Sprint are invalid” is objectionable because the requested information is “irrelevant”, would be laughable if not for Brandenburg Telephone’s very serious attempt to stonewall Sprint’s legitimate request for information with unfounded objections. Further, the justification for Brandenburg Telephone’s

relevance objection, that “Brandenburg Telephone’s tariff does not require the use of PIU factors for all traffic”, is a non sequitur that does not meaningfully relate at all to the question that is being asked. The second objection, that Brandenburg Telephone “does not keep the information requested in the ordinary course of its business”, interestingly begs the question as to whether Brandenburg Telephone has any documentary support for its contention in this case that Sprint’s PIUs are invalid. The fifth objection, that the request “seeks confidential, proprietary information” is addressed in full by the parties’ Protective Agreement executed on August 1, 2008 in connection with this case. And Brandenburg Telephone’s “objection” that the request “is but an instrument in Sprint’s transparent ploy to seek a continuance of the August 11 hearing date in this matter” is of course not a real objection but rather Brandenburg Telephone’s incorrect, and not a little jaded, characterization of Sprint’s legitimate discovery question. Finally, Brandenburg Telephone’s response subject to its objections can be paraphrased as follows: “we’ve already given it to you, we’ll give it to you at some future date, or you already have it.” That is not so much of a response to discovery as it is the embodiment of an expedient reply. In short, the answer provided by Brandenburg Telephone to Request No. 22 is non-responsive.

WHEREFORE, Sprint moves that the Commission grant its Motion, and grant such other and further relief as the Commission deems just and proper.

Respectfully submitted this 27th day of July, 2009.

A handwritten signature in black ink that reads "Douglas F. Brent". The signature is written in a cursive style with a large initial "D".

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Attorneys for Sprint
Communications Company L.P.

CERTIFICATE OF SERVICE

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