



Edward T. Depp
502-540-2347
tip.depp@dinslaw.com

August 5, 2009

RECEIVED

AUG 06 2009

**PUBLIC SERVICE
COMMISSION**

VIA FEDERAL EXPRESS AND E-MAIL

Hon. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

***Re: 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***

Dear Mr. Derouen:

We have enclosed for filing in the above-styled case the following documents:

1. An original and eleven (11) copies of the redacted, prefiled rebuttal testimony of Allison T. Willoughby of Brandenburg Telephone Company; and
2. A motion for confidential treatment of certain information that was redacted from Ms. Willoughby's rebuttal testimony, along with a highlighted version of that testimony identifying the redacted, confidential information.

The signed verification page from Ms. Willoughby's prefiled rebuttal testimony will be filed at a later date.

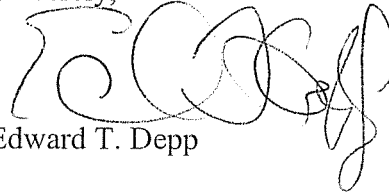
Please return a file stamped copy of each document to us in the enclosed, self-addressed, stamped envelope.

Hon. Jeff Derouen
August 5, 2009
Page 2

Thank you, and if you have any questions, please call me.

Sincerely,

Edward T. Depp

A handwritten signature in black ink, appearing to read 'Edward T. Depp', with a large, stylized flourish extending to the right.

ETD/lb

Enclosures

cc: All Parties of Record (*Via U.S. Mail and e-mail*)

**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) Case No. 2008-00135
IMPOSITION OF ACCESS CHARGES)

PETITION FOR CONFIDENTIALITY

Petitioner Brandenburg Telephone Company ("Brandenburg"), by counsel, and pursuant to 807 KAR 5:001, Section 7, hereby petitions the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to accord confidential treatment to certain highlighted information contained in the Prefiled Direct Testimony of Allison T. Willoughby on behalf of Brandenburg Telephone Company (the "Testimony") filed with the Commission on July 21, 2009. The material subject to this motion includes Brandenburg Telephone traffic study logs (Testimony Exs. A-B), a billing statement from Sprint related to the traffic study (Testimony Ex. C), call jurisdiction reports from Sprint relevant to the study (Testimony Ex. D), Brandenburg's traffic study conclusion (Testimony Ex. E), a billing summary of amounts owed to Brandenburg Telephone for access services (Testimony Ex. G) and portions of the Testimony referencing data contained in the confidential exhibits. In support of this Petition, Brandenburg states as follows.

I. Applicable Law

The Kentucky Administrative Regulations permit a party to maintain the confidentiality of certain information submitted to the Commission, provided the requesting party can "[set] forth specific grounds pursuant to . . . the Kentucky Open Records Act, upon which the commission should classify that material as confidential." 807 KAR 5:001 § 7(2)(a)(1).

Relevant to this petition, the Kentucky Open Records Act exempts three kinds of records from the requirement of public inspection: (1) "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy"; (2) "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records; and (3) "records or information the disclosure of which is prohibited by federal law or regulation." KRS § 61.878(1)(a), (1)(c)(1), (1)(k).

II. Argument

Brandenburg has highlighted confidential call detail information contained within its Testimony and corresponding exhibits, including full identification of incoming and outgoing phone numbers, a customer name and account number, and numerous billing entries unrelated to the traffic study at issue in the Testimony.

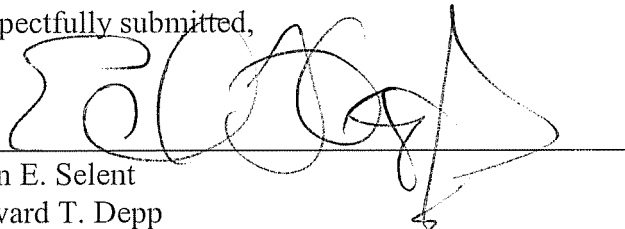
Such detailed records of account holder information and incoming and outgoing calls are personal except to the extent needed to support Brandenburg's traffic study. They reveal account information, call patterns, and information sufficient to identify individuals who placed calls to and received calls from the account holder. Public release of this information would add nothing useful to the record in these proceedings and would constitute a "clearly unwarranted invasion of personal privacy." KRS § 61.878(1)(a).

In addition, these records contain confidential and proprietary information which could "present an unfair commercial advantage" to Brandenburg's competitors by revealing Brandenburg's methods in designing its traffic study. KRS § 61.878(1)(c)(1).

Finally, Customer Proprietary Network Information, or “CPNI” is protected by federal law. Section 222 of the Communications Act of 1934, as amended, prohibits telecommunications carriers from disclosing information about their customers that they obtain by virtue of providing them with telecommunications service. 47 U.S.C § 222(c). Congress has defined CPNI as “information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier,” and “information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.” *Id.* § 222(f)(1). The information sought to be classified in this case is CPNI which is federally protected from disclosure; therefore, disclosure of the information may violate federal law and the information should be afforded confidential treatment under Kentucky law. KRS § 61.878(1)(k).

WHEREFORE, pursuant to 807 KAR 5:001, Section 7, Brandenburg requests the Commission to issue an order directing that the customer information (highlighted in yellow in the Testimony and in Exhibits A-E and G attached to the Testimony) be afforded confidential treatment pursuant to the rules and regulations of the Commission.

Respectfully submitted,



John E. Selent
Edward T. Depp
Holly C. Wallace
DINSMORE & SHOHL LLP
1400 PNC Plaza
Louisville, KY 40202
(502) 540-2300 (telephone)
(502) 585-2207 (facsimile)

Counsel to Brandenburg Telephone Company

REDACTED

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. 2008-135

**PREFILED REBUTTAL TESTIMONY OF ALLISON T. WILLOUGHBY
ON BEHALF OF
BRANDENBURG TELEPHONE COMPANY**

August 5, 2009

RECEIVED

AUG 06 2009

**PUBLIC SERVICE
COMMISSION**

John E. Selent
Edward T. Depp
Holly C. Wallace
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 West Jefferson St.
Louisville, Kentucky 40202
Tel: (502) 540-2300
Fax: (502) 585-2207

Counsel to Brandenburg Telephone Company

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF COMPLAINT)
OF SPRINT COMMUNICATIONS)
COMPANY L.P. AGAINST)
BRANDENBURG TELEPHONE) Case No. 2008-135
COMPANY FOR THE UNLAWFUL)
IMPOSITION OF ACCESS CHARGES)

PREFILED REBUTTAL TESTIMONY OF ALLISON T. WILLOUGHBY
ON BEHALF OF
BRANDENBURG TELEPHONE COMPANY

1 Q. WHAT IS YOUR NAME?

2 A. My name is Allison T. Willoughby. I am testifying on behalf of Brandenburg Telephone
3 Company ("Brandenburg Telephone") in response to the testimony of Julie A. Walker ("Testimony
4 of Walker") that was filed on behalf of Sprint Communications Company, L.P. ("Sprint").

5 Q: ARE YOU FAMILIAR WITH SPRINT'S RECENTLY-FILED TESTIMONY IN THIS
6 MATTER?

7 A: Yes, and I find it interesting that the testimony contradicts a number of Sprint's earlier
8 statements. Sprint now says its admitted inaccuracies may not be caused by a confusion between
9 LATAs and states, but by an intentional routing of intrastate calls to out-of-state switches.
10 (Testimony of Walker at 20-21.) Sprint also acknowledges that its methods cannot be 100%
11 accurate, and that the tariffs only require a PIU for unjurisdictionalized traffic. (Testimony of
12 Walker at 10, 13, 20.) Yet later, it argues that Brandenburg Telephone should adopt Sprint's
13 numbers for all traffic in order to bill correctly. (Testimony of Walker at 20.) At times I have
14 difficulty seeing how Sprint's testimony is in line with basic facts, such as when it claims that it
15 "remitted payment on the valid portion of the access invoices." (Testimony of Walker at 29.) It has

1 been well-established, and even admitted by Sprint, since the beginning of this action that Sprint
2 submitted no payment whatsoever for any access traffic since February of 2008. Sprint even
3 contradicts this claim of payment earlier in its testimony when it admits it "short-paid" Brandenburg
4 Telephone's invoice. (Testimony of Walker at 22.)

5 Setting Sprint's tactics to the side, however, the bottom line is that Sprint's methods are
6 inaccurate, and its testimony supports this conclusion.

7 • First, Sprint recognizes that Brandenburg Telephone's method of comparing CPN is
8 generally accurate, except, as Sprint puts it, when the caller is "on vacation at Disney
9 World." (Testimony of Walker at 15.)

10 • Second, Sprint admits that its "alternate logic" for determining call jurisdiction cannot be
11 100% accurate, and that it "classified █████% of the wireless-originated minutes as interstate."
12 (Testimony of Walker at 18, 20, 27 (emphasis added).) Sprint also admits that, contrary to
13 its earlier statements, it is intentionally routing inter-MTA Kentucky-to-Kentucky wireless
14 calls to out-of-state switches, and that it consequently misjurisdictionalizes such traffic.
15 (Testimony of Walker at 20-21.)

16 • Third, Sprint admits it never raised any issues with Brandenburg Telephone's
17 jurisdictionalization methods until November of 2007 -- allegedly "years" after it became
18 aware of the complications of jurisdictionalizing wireless traffic -- and that it paid its bills
19 until February of 2008. It is nonsense for Sprint to now claim that it "in absolutely no way"
20 indicated its acceptance of Brandenburg Telephone's rates when, by its own admission, it
21 paid these rates for years without dispute. (Testimony of Walker at 21.)

22 • Fourth, Sprint admits it only wanted prospective relief until Brandenburg Telephone refused
23 to give in to its ultimatum, at which point Sprint retaliated by withholding all payment and

1 seeking increasingly large sums for retroactive damages (now said to be more than \$2
2 million dollars). (Testimony of Walker at 22-23, 28-29.) This is financial intimidation.

3 **Q: SPRINT'S TESTIMONY FOCUSES A GREAT DEAL ON BRANDENBURG**
4 **TELEPHONE'S USE OF CPN TO JURISDICTIONALIZE ACCESS TRAFFIC. ARE**
5 **BRANDENBURG TELEPHONE'S METHODS APPROPRIATE?**

6 A: Yes, and I believe this conclusion is supported by Sprint's own evidence and testimony. As
7 both parties agree and as the FCC has said, jurisdictionalization of call traffic focuses on the location
8 of the callers. Because of the nature of wireless telecommunications, this measurement is presently
9 not possible, and phone companies must choose a proxy for physical location that most accurately
10 reflects caller location. In this matter, that proxy is best reflected by Brandenburg Telephone's
11 method, which is appropriate, objective, fair, and approved by its tariffs.

12 **Q. DO BRANDENBURG TELEPHONE'S FILED AND APPROVED TARIFFS**
13 **PROVIDE GUIDANCE FOR DETERMINING CALL JURISDICTION, AND IS SPRINT**
14 **AWARE OF THESE PROVISIONS?**

15 A. As I discussed in my previous testimony, Brandenburg Telephone's use of calling party
16 number ("CPN") to jurisdictionalize access traffic is appropriate, objective, effective, historically-
17 recognized, and in compliance with its tariffs. Pursuant to Brandenburg Telephone's method, a call
18 is "interstate" when the originating CPN and terminating CPN are assigned to different states. For
19 example, a call from New York's 212 area code to a 270 phone number in Brandenburg, Kentucky
20 would be rated as "interstate." Conversely, this method would rate calls between numbers assigned
21 to the same state as "intrastate." For example, a call from the 859 area code in Covington, Kentucky
22 to the 270 area code in Brandenburg, Kentucky would be rated as intrastate.

1 This method -- an approach that is used by other RLEC's in Kentucky -- is cited approvingly
2 in Brandenburg Telephone's filed and approved tariffs. In fact, Sprint even quotes a small portion of
3 Section 2.3.11(C)(1) of the Duo County Tariff, but conveniently omits that section's provision that
4 "[t]he customer shall consider every call that terminates to a called party within the same state as the
5 state where the calling party is located to be intrastate communications." Even more explicitly,
6 Section 2.3.11(C)(3) of the tariff defines "interstate" as "minutes where the calling number is in one
7 state and the called number is in another state." Although Sprint quotes a number of passages from
8 the Duo County Tariff, it is silent as to the definition of the term at the heart of the dispute. This is
9 no doubt due to Sprint's recognition that, whatever other arguments it may make, the relevant
10 provisions in Brandenburg Telephone's tariffs directly refute Sprint's central argument that the use of
11 CPN is somehow inappropriate.

12 **Q. DO YOU BELIEVE BRANDENBURG TELEPHONE'S METHOD IS MORE FAIR**
13 **AND ACCURATE THAN SPRINT'S?**

14 Yes, I do, and the evidence supports this. Sprint raises unsubstantiated arguments about
15 accuracy, but can only claim that a comparison of CPN is inaccurate for wireless calls when the
16 caller is traveling out-of-state and calling a phone number near his or her home. (Testimony of
17 Walker at 15.) For support, Sprint relies only on its discredited traffic reports and throws out the
18 hypothetical that a Kentucky resident vacationing at Disney World could call home and conceivably
19 be rated as intrastate instead of interstate. This is not earth-shattering, nor does it destroy the
20 appropriateness of relying on CPN.

21 Brandenburg Telephone has already agreed that the use of CPN, like the use of any proxy,
22 will result in some small inaccuracies. However, that is not the end of the inquiry. We have to ask
23 what other options are available. In this case, Brandenburg Telephone's use of CPN compares

1 favorably to Sprint's demonstrably inaccurate method. Brandenburg Telephone's comparison of
2 CPN may misjurisdictionalize the call of a Kentucky citizen from Disney World to home, but such
3 instances are likely to be more or less cancelled out by, for example, calls made by Sprint end-users
4 with out-of-state numbers who may be sitting in the Northern Kentucky International Airport waiting
5 to catch a flight. Brandenburg Telephone's comparison of CPN is no more likely to err in favor of
6 one rate or another. Sprint, in contrast, admits it routes all Kentucky wireless calls dialed from
7 MTA's other than the Louisville MTA to out-of-state switches. (Testimony of Walker at 20-21;
8 Sprint's Amended Response to Data Request No. 22 (filed July 31, 2009).) Sprint also admits it
9 incorrectly jurisdictionalizes any inter-MTA intrastate call as interstate. *Id.* When Sprint's method
10 misjurisdictionalizes traffic, it errs in Sprint's favor (and to Brandenburg Telephone's detriment)
11 100% of the time.

12 The evidence in this matter shows that Brandenburg Telephone's method is more fair and less
13 vulnerable to gaming than is Sprint's. It is therefore preferable.

14 **Q. WHAT IS THE BASIS FOR SPRINT'S CLAIM THAT BRANDENBURG**
15 **TELEPHONE'S METHOD IS INACCURATE?**

16 A. Ultimately, nothing. Perhaps the most telling thing about Sprint's testimony is that it includes
17 no evidence that Brandenburg Telephone's method is inaccurate.

18 The comparison is striking. When called upon to provide evidence of Sprint's inaccuracies,
19 Brandenburg Telephone conducted an empirical study of access traffic. It kept detailed records to
20 compare to Sprint's "official" records, and thereby proved that Sprint was misjurisdictionalizing
21 100% of inter-MTA intrastate wireless calls in the study. When called to provide evidence of
22 Brandenburg Telephone's inaccuracies, what does Sprint do? It simply pulls out its debunked
23 "official" records and pretends they are authoritative. Sprint's entire argument, encapsulated on page

1 27 of its testimony, is essentially that "Sprint's records say X, Brandenburg Telephone's records say
2 Y, therefore Brandenburg Telephone is wrong."

3 This "they are wrong because we said so" argument is not compelling. It is further
4 undermined by the fact that Sprint's "official" records indicate that █████% of all wireless-originated
5 minutes at issue are interstate. (Testimony of Walker at 27.) Even without further discussion, this
6 number is not credible. It is especially unbelievable when you consider that Sprint's estimate has
7 already been disproven by Brandenburg Telephone's empirical traffic study and Sprint's own
8 admissions of inaccuracy.

9 The simple truth is that Sprint disagrees with Brandenburg Telephone's methods but can
10 point to no evidence to demonstrate that Brandenburg Telephone's proxy is less accurate. After a
11 year and a half of dispute, the fact that Sprint has no evidence to support its arguments is pretty
12 close to an admission that Brandenburg Telephone's method is accurate.

13 **Q: DO YOU STILL BELIEVE SPRINT'S METHOD TO BE INACCURATE?**

14 A: Yes, I believe Sprint's method is inaccurate, and I believe this conclusion is supported by
15 Sprint's own testimony and evidence. First, Sprint has confirmed the results of Brandenburg
16 Telephone's traffic study, which provides empirical evidence that Sprint is misjurisdictionalizing
17 traffic. Second, Sprint admits that its method is inaccurate. Third, Sprint's testimony indicates that it
18 knows full well that the traffic report it gave Brandenburg Telephone does not qualify as a "PIU"
19 according to the very requirements Sprint cites from Brandenburg Telephone's tariffs.

20 **Q. IS THERE ANY EVIDENCE THAT PROVES SPRINT IS**
21 **MISJURISDICTIONALIZING TRAFFIC?**

22 A. Yes, Brandenburg Telephone has produced empirical data proving that Sprint's method
23 misjurisdictionalizes significant portions of traffic. Sprint's testimony does nothing whatsoever to

1 refute Brandenburg Telephone's traffic study. In fact, Sprint concedes the results of the traffic study
2 are typical. Sprint admits "when a caller is physically located in Covington, Kentucky and calling
3 Brandenburg[, Kentucky, t]his would be an intrastate interMTA call . . . [but] would appear to
4 [Sprint's method of jurisdictionalization] to be an interstate call." (Testimony of Walker at 21.)
5 Sprint further admits that it would classify every Kentucky-to-Kentucky call covered in Brandenburg
6 Telephone's traffic study "as an interstate call." (Testimony of Walker at 21.)

7 **Q. DOES SPRINT DENY ITS METHOD IS INACCURATE?**

8 A. No, Sprint repeatedly admits that its method is inaccurate. Although Sprint protests that "no
9 jurisdictional method is 100% accurate," it seems to go out of its way to give varying accounts on
10 the many ways its own method is wrong. (Testimony of Walker at 20.)

11 In its direct testimony, Sprint admits its method fails whenever "cell sites [are not] physically
12 located in the same MTA or state as is the wireless switch to which they are connected." (Testimony
13 of Walker at 20.) Specifically, Sprint admits it would categorize any intrastate call from Covington,
14 Kentucky to Brandenburg, Kentucky as "interstate." (Testimony of Walker at 20.) Sprint's failure is
15 more widespread than that, however, as its own evidence shows. It stems from a widespread and
16 misleading routing practice that is well-known to Sprint, but which Sprint has taken pains to conceal
17 in these proceedings.

18 In Data Request No. 22, Brandenburg Telephone addressed this exact issue and asked
19 whether "Sprint's network [is] configured in a manner that would permit it to route a wireline or
20 wireless call originating in Kentucky and terminating to an end-user physically located in Kentucky
21 through a switch located outside of Kentucky so that the call would appear to be interstate in nature."

1 Sprint answered "no."¹ It has now amended its response to Data Request No. 22 less than a week
2 and a half before the hearing to admit that "for wireless-originated calls . . . cell sites can be
3 connected to switches in other states." (Sprint's Amended Response to Data Request No. 22.). In its
4 testimony, Sprint further admits that it often routes calls to out-of-state switches, thus making an
5 intrastate call "appear to [Sprint's method of jurisdictionalization] as an interstate call." (Testimony
6 of Walker at 20-21.) To determine how widespread this problem is, the Commission need only refer
7 to Sprint's own evidence that it has [REDACTED]
8 [REDACTED]. (Sprint's Response to Brandenburg's First Set of Discovery, Confidential Attachment
9 DR-6.) Therefore, when Sprint admits its method fails whenever "cell sites [are not] physically
10 located in the same MTA or state as is the wireless switch to which they are connected," it is
11 admitting that its method fails whenever a caller is on a cell phone in any of the four non-Louisville
12 MTAs. (Testimony of Walker at 20.) In fact, Sprint's method similarly fails for all access service
13 providers in Kentucky (and not just Brandenburg Telephone).

14 A quick look at the numbers shows how significant this flaw is (and suggests why Sprint
15 initially concealed it). Even according to Sprint's version of the facts, it only disputes [REDACTED]% of
16 wireless-originated access traffic minutes. (Testimony of Walker at 22.) This routing flaw, familiar
17 to and admitted by Sprint, has a widespread effect across many regions of Kentucky and causes
18 Sprint to misjurisdictionalize 100% of inter-MTA intrastate wireless calls. After Brandenburg
19 Telephone discussed the results of its traffic study in a letter to Sprint earlier this year, Sprint was
20 faced with hard evidence that it chooses not to correctly jurisdictionalize intrastate calls from
21 Covington. Unable to deny the problem, Sprint's only available response was to dismiss it as

¹ Sprint's full response: "No, Sprint's nationwide network is interconnected such that calls from/to similar geographic locations can take differing routes across the network to achieve successful call completion. Regardless of the intermediate routing across Sprint's network, the information representing geographic call origination and termination locations (data used to determine jurisdiction) is not changed."

1 unimportant. Sprint cited the U.S. Census population of Covington, then argued that because few
2 people live in Covington only a "very small percentage" of traffic would be misjurisdictionalized.
3 (Testimony of Walker at 21.)

4 The fact that Sprint has to rely on extrapolations of U.S. Census data to estimate how much
5 traffic originates from Covington only proves Brandenburg Telephone's point: Sprint cannot
6 properly determine caller location. Even setting that aside, the problems with this defense are
7 numerous. Covington may not be a national metropolis, but it is a city of more than 40,000 people
8 and home to a major international airport. A jurisdictionalization method that never correctly
9 categorizes inter-MTA intrastate calls from a city this size is not accurate, proper, or preferable. Of
10 course, population volume does not correspond with traffic volume, and so with the information
11 currently available it is impossible to determine what percentage of Sprint's disputed ■% is
12 attributable to Covington traffic alone.

13 More fatal than all these flaws, however, is Sprint's latest admission that its method fails for
14 every single intrastate call made to Brandenburg Telephone's service territory from any non-
15 Louisville MTA. Dismissively citing Covington's population gets Sprint nowhere, because this
16 exact same flaw affects call traffic from many cities and regions across Kentucky. Four more MTAs
17 -- 18, 28, 43, and 44 -- intersect with Kentucky. Entire regions of Kentucky are in these border
18 MTAs that extend deep into other states. By Sprint's own admission, it misjurisdictionalizes
19 intrastate traffic from every one of these regions, because in all of them the "cell sites [are not]
20 physically located in the same MTA or state as is the wireless switch to which they are connected."
21 (Testimony of Walker at 20.) This problem cannot be brushed off by irrelevant references to the
22 population of a single town in one of five major population centers affected.

1 Sprint's misrouting is also directly addressed by the tariff (and even quoted by Sprint).
2 Section 2.3.11(C)(1)(a) of the NECA Tariff provides that "[t]he manner in which a call is routed
3 through the telecommunications network does not affect the jurisdiction of a call, i.e., a call between
4 two points within the same state is an intrastate call even if it is routed through another state."
5 (Testimony of Walker at 12 (emphasis added).) Sprint's method does not adhere to this requirement,
6 as it admits in its testimony and as Brandenburg Telephone's traffic study proved.

7 Throughout this matter, and particularly in its testimony, Sprint has admitted to crippling
8 failures of its jurisdictionalization method. It therefore makes no sense to force Brandenburg
9 Telephone to defer to numbers that even Sprint admits are wrong.

10 **Q. IS SPRINT'S TRAFFIC REPORT A TRUE "PIU"?**

11 A. As discussed in my previous testimony, Sprint's report is not a PIU as defined in
12 Brandenburg Telephone's tariffs. Sprint's own direct testimony indicates that it is fully aware of this
13 problem, yet it continues to refer to its flawed estimate as a "PIU."

14 Sprint admits that the Duo County Tariff "sets forth specific requirements an IXC must
15 follow to develop" a PIU. (Testimony of Walker at 10 (emphasis added).) It then approvingly
16 quotes the tariff's requirement that a PIU "report the percentage of interstate use." (Testimony of
17 Walker at 10.) It later quotes the NECA tariff requirement that a PIU must "provide a projected
18 estimate of its traffic, split between the interstate and intrastate jurisdictions." (Testimony of Walker
19 at 12.) It even quotes the NECA Tariff requirement that "[t]he manner in which a call is routed
20 through the telecommunications network does not affect the jurisdiction of a call, i.e., a call between
21 two points within the same state is an intrastate call even if it is routed through another state."
22 (Testimony of Walker at 12.)

1 These extensive citations prove that Sprint is very familiar with what is required by
2 Brandenburg Telephone's tariffs and with what the tariffs require of a PIU. Sprint quotes the tariffs'
3 requirements that a PIU must provide an accurate report of the split between intrastate and interstate
4 traffic, but in the next breath admits that it does not provide an accurate report of the split between
5 intrastate and interstate traffic. As I testified above, Sprint has confirmed the results of Brandenburg
6 Telephone's study that proves Sprint does not accurately categorize significant amounts of access
7 traffic, and Sprint has admitted its reports are inaccurate.

8 Sprint's reports, however they are characterized, are not PIUs and Sprint knows this.
9 Further, there is no provision in any of Brandenburg Telephone's tariffs that require it to defer to any
10 customer-provided number that is not a PIU. Despite this knowledge, Sprint persists in its attempts
11 to force Brandenburg Telephone to accept its improper traffic estimates.

12 **Q: SPRINT SAYS IT "JUST WANT[S] THE MINUTES BILLED CORRECTLY." DO**
13 **YOU AGREE WITH THIS CHARACTERIZATION?**

14 A: I don't even think Sprint agrees with that statement. This is the sort of thing Sprint has done
15 throughout the dispute -- sound reasonable but act unreasonably. It sounds reasonable for Sprint to
16 say it just wants traffic to be "billed correctly," but what else can it say? Look past that, and by
17 Sprint's own admission its ideal method of "correct" billing incorrectly jurisdictionalizes traffic,
18 inflates the volume of interstate minutes, relies on misleadingly routed traffic, and conveniently
19 saves Sprint hundreds of thousands of dollars per year at the direct expense of Brandenburg
20 Telephone. Not only that, but when it comes time for Sprint to explain and defend its method
21 instead of just presenting its results as irrefutable fact, Sprint does not seem to know what to say. Is
22 it jurisdictionalizing based on LATAs or not? Is it jurisdictionalizing based on MTAs or not? Is its
23 estimate skewed by misleading interstate routing or not? Is the method "correct" or not? Sprint's

1 primary response to these questions has been to retaliate against Brandenburg Telephone by
2 withholding hundreds of thousands of dollars of payments and threatening to withhold more. When
3 Sprint does answer, it gives inconsistent versions of its actions, suggesting that it either does not
4 know what it is doing or that it is changing its answers based on what it thinks the Commission
5 wants to hear.

6 Brandenburg Telephone's position, in contrast, is very clear. We compare CPN because it
7 has been, and remains, the most accurate proxy for determining caller location. It is certainly more
8 accurate than the skewed "estimates" concocted by Sprint, and this conclusion is supported by both
9 parties' traffic studies.

10 **Q: CAN YOU GIVE EXAMPLES OF WHAT YOU BELIEVE TO BE SPRINT'S**
11 **"INCONSISTENT VERSION OF ITS ACTIONS"?**

12 A. Many. Although I believe the primary issue is that Sprint has admitted that its method is
13 inaccurate, this inaccuracy is reinforced by Sprint's general confusion about how its method works
14 and what it measures. Sprint spends a great deal of time in its testimony talking about "alternate
15 logic" and use of the JIP factor as if these things on their own are proof of accuracy. But the fact
16 remains that Sprint has yet to give reliable answers to specific problems that have been raised.

17 As discussed in my previous testimony, Sprint admitted in its initial response to Data
18 Request Number 3 that it:

19 "compares the MPS fields [originating] LATA and State to the
20 [terminating] LATA and State fields. If those two are equal, the call
21 is marked as intrastate. Otherwise the call is classified as interstate."

22 By this method, a call would only be classified as intrastate if both the state and LATA fields
23 matched. This is incorrect. Faced with the implications of its admission, Sprint later changed its
24 story about its reliance on LATA fields.

1 Similarly, but even more significantly, Sprint's direct testimony regarding its routing directly
2 contradicts its earlier statements. In Data Request No. 22, Brandenburg Telephone asked whether
3 "Sprint's network [is] configured in a manner that would permit it to route a wireline or wireless call
4 originating in Kentucky and terminating to an end-user physically located in Kentucky through a
5 switch located outside of Kentucky so that the call would appear to be interstate in nature." Sprint
6 answered "no."² Now, in its testimony, Sprint admits that it often routes calls to out-of-state
7 switches, thus making an intrastate call "appear to [Sprint's method of jurisdictionalization] as an
8 interstate call." (Testimony of Walker at 20-21.) These two statements cannot be read to be
9 consistent with one another and, faced with that realization, Sprint subsequently amended its
10 response to Data Request No. 22 to admit that "for wireless-originated calls . . . cell sites can be
11 connected to switches in other states." (Sprint's Amended Response to Data Request No. 22.) Sprint
12 is once again changing its story. Its newest admission, made less than a week and a half before the
13 hearing, combines with previous evidence to prove that Sprint will not properly jurisdictionalize any
14 inter-MTA intrastate traffic at all. (Sprint's Response to Brandenburg's First Set of Discovery,
15 Confidential Attachment DR-6.) Worse, Sprint admits it does not account for such obviously
16 misjurisdictionalized traffic, and that its method will simply "misclassify the jurisdiction" of those
17 calls. (Testimony of Walker at 20.)

18 There are a number of other instances where Sprint's versions of its facts are inconsistent.
19 For example, Sprint testifies that "[i]f Brandenburg would utilize [Sprint's] factor on all of the traffic
20 it bills Sprint, it would be billing Sprint correctly." (Testimony of Walker at 14 (emphasis added).)
21 However, Brandenburg Telephone's tariffs only require it to defer to a customer-provided PIU with

² Sprint's full response: "No, Sprint's nationwide network is interconnected such that calls from/to similar geographic locations can take differing routes across the network to achieve successful call completion. Regardless of the intermediate routing across Sprint's network, the information representing geographic call origination and termination locations (data used to determine jurisdiction) is not changed."

1 respect to traffic that cannot be otherwise jurisdictionalized. Sprint is well aware of this. In fact, just
2 8 pages earlier Sprint testifies that "[i]f the correct jurisdiction cannot be determined from the call
3 data, the LEC must use the 'percentage interstate use' or 'PIU' factor provided by the IXC to
4 apportion the undetermined traffic between the two jurisdictions." (Testimony of Walker at 6
5 (second emphasis added).) Sprint also quotes the Duo County Tariff's provision that "[w]hen
6 customer call details are insufficient to determine jurisdiction for the call, the customer shall supply
7 the projected interstate percentage." (Testimony of Walker at 10 (emphasis added).)

8 Based on this testimony, it is clear that Sprint understands that Brandenburg Telephone is
9 only required to defer to a PIU for traffic that cannot be jurisdictionalized by any other method. Yet
10 by alleging that Brandenburg Telephone has misjurisdictionalized certain wireless traffic, Sprint
11 backs its way into applying its inaccurate estimate to all traffic, rather than just the disputed wireless
12 traffic. Sprint does not hide from this fact, demanding that Brandenburg Telephone apply Sprint's
13 traffic reports without question to "all of the traffic it bills Sprint." (Testimony of Walker at 14.)
14 This is not required, and Sprint knows it. Brandenburg Telephone need only apply a valid PIU to
15 traffic that cannot be jurisdictionalized based on call detail. These inconsistencies are in addition to
16 those already discussed: that Sprint characterizes a flawed traffic report as a "PIU" even though it
17 knows it is not a PIU, or that Sprint has not even proven that Brandenburg Telephone's method is
18 inaccurate or that Brandenburg Telephone has to defer to any customer-provided numbers for any
19 amount of traffic. Once again, Sprint is overreaching.

20 Sprint's inconsistencies are too numerous to be chalked up to coincidence. Instead, Sprint is
21 hiding its true intentions.

1 **Q: IN ITS TESTIMONY, SPRINT ARGUES THAT IT "IN ABSOLUTELY NO WAY"**
2 **INDICATED TO BRANDENBURG TELEPHONE THAT IT WAS BILLING CORRECTLY**
3 **PRIOR TO NOVEMBER 2007. DO YOU AGREE WITH THIS CHARACTERIZATION?**

4 A: If Sprint means that it never accompanied its payments with a letter confirming the accuracy
5 of the bills it was paying in full, then I suppose that could be correct. That is obviously not what it
6 means, though.

7 Both parties admit that Sprint paid all of its bills to Brandenburg Telephone for access
8 services until February of 2008. Those years of payments alone indicate that Sprint agreed traffic
9 was being properly billed. Sprint cannot even plead ignorance. According to its own testimony,
10 Sprint "had been aware for years that there was a 'global' issue" with the jurisdictionalization of
11 wireless access traffic, and yet it still did not dispute the amounts it owed to Brandenburg Telephone.
12 (Testimony of Walker at 21.) Earlier in the testimony, Sprint clarifies that it first noticed
13 discrepancies between its own traffic estimates and what it was billed "[i]n the late 1990's," but took
14 no action for nearly a decade. (Testimony of Walker at 7.)

15 Sprint's testimony makes it clear that it approved of the amounts it was being billed and
16 acquiesced to the methods by which Brandenburg Telephone determined call jurisdiction.

17 **Q: IF SPRINT AGREED WITH THE AMOUNTS IT WAS BILLED UNTIL**
18 **NOVEMBER OF 2007, AS YOU CLAIM, WHY IS IT ATTEMPTING TO RECOVER**
19 **ALLEGED OVERCHARGES DATING BACK TO JANUARY OF 2002?**

20 A: Well, initially it wasn't. Sprint says again and again in its testimony that it only wanted
21 prospective relief until Brandenburg Telephone made it mad by questioning Sprint's numbers and
22 motivations. Here are a few examples:

1 •"I further explained [to Brandenburg Telephone] that it was Sprint's intention to work with
2 Brandenburg to correct its billing FROM THAT POINT ON." (Testimony of Walker at 22,
3 emphasis in original.)

4 •"It's worth repeating, that at the time Sprint was not pursuing any retroactive relief."
5 (Testimony of Walker at 23.)

6 •"Sprint wanted prospective relief only" (Testimony of Walker at 23.)

7 •"Sprint's initial objective was to assist Brandenburg in implementing a billing solution going
8 forward." (Testimony of Walker at 31.)

9 Sprint suggests it only includes "retroactive disputes" to cover the costs of this action. (Testimony of
10 Walker at 31.) Yet just a few pages earlier, it admits it calculated the alleged retroactive damages at
11 approximately the same time it filed its initial Complaint a year and a half ago, well before these
12 costs accrued. (Testimony of Walker at 25.) This timing makes it clear that Sprint began seeking
13 retroactive relief not to cover costs, but to intimidate Brandenburg Telephone by retaliating for
14 Brandenburg Telephone's decision to stand its ground and refuse to apply Sprint's flawed traffic
15 factor "on all of the traffic it bills Sprint." (Testimony of Walker at 14.)

16 Sprint accepted and paid Brandenburg Telephone's rates without any hint of complaint or
17 objection for almost a decade after it says it became aware of the facts that form the basis for its
18 dispute. It is not credible for Sprint to suddenly claim a right to refuse payment and seek damages
19 on the basis of overcharging. In fact, I find it interesting that after a decade of acceptance, Sprint
20 only decided to begin this dispute around the same time numerous press reports indicate it is
21 struggling financially. Although I cannot speak as to Sprint's motives, I believe its behavior
22 throughout this dispute -- withholding all payment to force Brandenburg Telephone to accept its
23 terms, repeatedly changing its explanations of its method, contradicting itself on any number of
24 critical facts, and expanding requested damages as retribution -- speaks volumes about its lack of
25 good faith.

1 **Q: WOULD YOU PLEASE SUMMARIZE THE ACTIONS YOU REQUEST THE**
2 **COMMISSION TAKE?**

3 A: Certainly.

4 First, Brandenburg Telephone requests that the Commission deny Sprint's claim of unlawful
5 imposition of access charges and dismiss its Complaint in its entirety.

6 Second, Brandenburg Telephone requests that the Commission order Sprint to pay the full
7 outstanding balance owed for all access traffic.

8 Third, Brandenburg Telephone requests that the Commission permit it to terminate service to
9 Sprint in the event of continued nonpayment.

10 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

11 A. Yes.

CERTIFICATE OF SERVICE


I hereby certify a true and accurate copy of the foregoing was served on the following, via e-mail (on or before 4:00 p.m. E.D.T.) and first-class U.S. Mail, on this 5th day of August, 2009.

John N. Hughes (jnhughes@fewpb.net)
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Douglas F. Brent (douglas.brent@skofirm.com)
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

Philip R. Schenkenberg (pschenkenberg@briggs.com)
Briggs & Morgan, P.A.
200 IDS Center
80 South 8th St.
Minneapolis, MN 55402

Counsel for Sprint Communications Company L.P.



Counsel to Brandenburg Telephone Company

1675225v6