

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

_____)	
SPRINT COMMUNICATIONS COMPANY L.P.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-2433-JWL
)	
VONAGE HOLDINGS CORP. and)	
VONAGE AMERICA, INC.)	
)	
Defendants.)	
_____)	

**VONAGE AMERICA, INC. AND VONAGE HOLDINGS CORP.’S
RESPONSE TO SPRINT COMMUNICATIONS CO. LLP’S
MOTION TO COMPEL PRODUCTION OF FINANCIAL DOCUMENTS**

Defendants Vonage America, Inc. and Vonage Holdings Corp. (collectively “Vonage”) respectfully submit this response in opposition to the Motion to Compel Production of Financial Documents (D.I. 137) filed by Sprint Communications Co., L.P. (“Sprint”).

Sprint’s motion to compel Vonage to produce financial documents is both inaccurate and moot. All responsive, non-privileged documents from the categories specified by Sprint, to the extent such documents exist and could be located, have been produced to Sprint. Moreover, the spreadsheets that Sprint requested be produced in Excel (.xls) format have now been produced to Sprint in that specified format.. Accordingly, Sprint’s motion is now moot and therefore should have been withdrawn so as not to unnecessarily burden this Court. Given that Sprint has failed to do so, however, this Court should deny Sprint’s motion for the reasons below.

I. ARGUMENT

A. All documents sought by Sprint in its Motion have been produced.

Sprint's Motion to Compel seeks the immediate production of documents from five (5) specific categories. Vonage, however, has already produced to Sprint all of the responsive, non-privileged documents in Vonage's possession, custody or control that could be located for each of these specific categories.

For example, category A in Sprint's motion specifies "Bound Volumes of Reports Provided to Auditors". All such reports provided to auditors, to the extent they exist and could be located after a reasonable search, have been produced to Sprint as documents within Bates range VON_709839 to VON_711103.

Similarly, category B in Sprint's motion specifies "Semi-Annual Budgets/Models for 2002 through 2006 (10 Excel files)". All of these files were originally first produced to Sprint months ago. Sprint, however, noted that some of these files contained errors in certain entries, *e.g.* certain entries were apparently missing. Accordingly, Vonage has subsequently produced all of these files for a second time, this time as documents within Bates range VON_701844 to VON_709838. Moreover, Vonage has also produced to Sprint a CD with all of these files in their original, native Excel format (.xls).

Category C in Sprint's motion specifies "Deal Books for Each Round of Financing". All such Deal Books, to the extent they exist and could be located after a reasonable search, have been produced to Sprint as documents within Bates range VON_696295 to VON_701738. Within this Bates range are Deal Books titled: Series A & A-2, B, C, D, and E Preferred Stock Financing, the IPO; and Senior Unsecured Convertible Notes Financing.

Category D in Sprint's motion specifies "Offering Memorandum for Series B Financing". This memorandum was produced to Sprint as a document bearing Bates numbers VON_0712433 to VON_0712480.

Finally, category E in Sprint's motion seeks "Materials Provided to Vonage 'Angel Investors'". These documents were not sought as part of a formal request for production, but rather were first requested in a letter from Sprint's counsel sent to Vonage's counsel on February 12, 2007. Since receipt of that letter, Vonage has conducted multiple searches for responsive documents that may fall within this category, but has been unable to locate any responsive documents beyond what may have already been produced to Sprint in connection with one of Sprint's prior requests for production.

Thus, to the extent that they exist and could be located after a reasonable search, all responsive documents sought by Sprint's motion have been produced to Sprint. Accordingly, Sprint's question 1 is now moot.

B. All Semi-Annual Budgets/Reports sought by Sprint in its Motion have been produced in Excel (.xls) format.

Sprint's Motion to Compel also seeks a certain category of documents in native Excel (.xls) format. These documents, however, have already been produced to Sprint in the format requested, *i.e.* Excel (.xls) electronic format.

Vonage only recently discovered that its vendor for processing and producing documents had converted these Excel format documents into a different format prior to production (and had not advised Vonage of that conversion). Vonage further discovered that this vendor was unaware of any way to produce these documents in native format and Bates stamped. Nevertheless, Vonage went ahead and produced to Sprint a CD containing all of these Excel format documents in their native (.xls) format, even though Vonage remains concerned that the

content of these files may be altered by Sprint and/or that it may be difficult to refer to these files later in this litigation due to a lack of an identifying Bates number.

All Excel documents sought by Sprint's motion have therefore been now produced to Sprint in their native Excel (.xls) format. Accordingly, Sprint's question 2 is also moot.

II. CONCLUSION

For at least the foregoing reasons, Vonage respectfully requests that the Court enter an Order denying Sprint's Motion to Compel Production of Financial Documents.

Respectfully submitted,

/s/ Patrick J. Kaine
Don R. Lolli KS # 22538
Patrick J. Kaine KS #15594
Dysart Taylor Lay Cotter & McMonigle P.C.
4420 Madison Avenue
Kansas City, Missouri 64111
816-931-2700
pkaine@DysartTaylor.com
dlolli@DysartTaylor.com

Patrick D. McPherson
Barry Golob
Donald R. McPhail
Patrick C. Muldoon
Duane Morris L.P.
1667 K Street N.W.
Washington, DC 20006-1608
202-776-7800
pdmpherson@duanemorris.com
bgolob@duanemorris.com
drmcpmail@duanemorris.com
pcmuldoon@duanemorris.com
*Attorneys for Defendants/Counterclaim
Plaintiff Vonage America, Inc. and Vonage
Holdings Corp.*

CERTIFICATE OF SERVICE

I hereby certify on this 11th day of April, 2007 that a copy of the foregoing was filed electronically, with notice of case activity to be generated and sent electronically by the Clerk of the Court to:

B. Trent Webb
Adam P. Seitz
Erick A. Buresh
SHOOK, HARDY & BACON L.P.
2555 Grand Boulevard
Kansas City, MO 64108-2613
Fax: (816) 421-5547
**ATTORNEYS FOR PLAINTIFF/
COUNTERCLAIM DEFENDANT**

/s/ Patrick J. Kaine

Attorney for Defendants Vonage Holdings
Corp. and Vonage America, Inc.