

**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.,)	
VONAGE AMERICA, INC.,)	
)	
Defendants.)	
)	
)	
)	
)	

**SPRINT’S REPLY TO VONAGE’S RESPONSE TO SPRINT’S MOTION TO COMPEL
PRODUCTION OF FINANCIAL DOCUMENTS**

Based on documents produced after the filing of its Motion, Sprint no longer seeks documents in categories A,¹ C,² D,³ and E⁴ of its Motion to Compel Production of Financial Documents. But after review of recently produced documents, Sprint believes that additional documents in category B exist and should be produced immediately. On November 16, 2006, Vonage’s Chief Financial Officer, John Rego, testified under oath as Vonage’s corporate representative to the existence of semi-annual budgets that contain projections of Vonage’s future revenues and expenses. On April 6, 2007, Vonage finally produced 30

¹ Vonage finally produced these documents on April 5, 2007. Letter from Lahey to Strand (April 5, 2007), Exhibit A. Sprint regrets that it had to bring this deficiency to the Court’s attention before Vonage tendered these documents.

² Vonage finally produced these documents on April 3, 2007. Letter from Lahey to Strand (April 3, 2007), Exhibit B. Sprint regrets that it had to bring this deficiency to the Court’s attention before Vonage tendered these documents.

³ Vonage finally produced these documents on April 10, 2007. Letter from Lahey to Strand (April 10, 2007), Exhibit C. Sprint regrets that it had to bring this deficiency to the Court’s attention before Vonage tendered these documents.

⁴ Vonage has not yet produced these documents, but in an effort to narrow the issues before the Court, Vonage will accept Vonage’s representation that it “has been unable to locate any responsive documents.” Vonage’s Response to Sprint’s Motion to Compel Production of Financial Documents, 3.

Microsoft Excel files which it claims to be the budgets Mr. Rego described; however, only six of these documents contain projections of future revenues and expenses and none of these appear to have been created in 2002 or 2003. Therefore, as more fully set forth below, Sprint respectfully requests the Court's assistance in compelling the missing semi-annual budgets in Microsoft Excel format.

Mr. Rego testified that since he joined Vonage they have published budgets on January 1st and July 1st of each year. Rego Dep. 66:19-67:15, Exhibit J to Sprint's Memo. in Support of Sprint's Motion to Compel Production of Financial Documents. Each of these budgets is created in Microsoft Excel; and maintained, used, and distributed to investors in that format. Rego Dep. 67:16-68:9, 80:4-13. Mr. Rego further testified that each of these budgets project Vonage's performance four to five years into the future. Rego Dep. 68:20-69:3. Counsel for Sprint clarified this point as follows:

Q. . . . [F]or example, then, if we looked at the budget in 2002 when you joined the company?

A. Right.

Q. It would project out for through 2006 or 2007?

A. That's right.

Rego Dep. 69:7-13. Mr. Rego joined Vonage in July of 2002. Rego Dep. 10:19-11:1. Therefore, the earliest budget would have been published in 2002 or 2003 and would have projected Vonage's performance through at least 2006.

On April 6, 2007, Vonage produced 30 Microsoft Excel files. Letter from Lahey to Strand (April 6, 2007) (enclosing one CD containing Microsoft Excel files), Exhibit D. But only six of these files included projections as described by Mr. Rego. Email from Strand to

McPhail (April 9, 2007), Exhibit E. These projections appear to be the budgets for the years 2004, 2005, and 2006. *Id.* But no projections were provided from the years 2002 or 2003. *Id.*

Counsel for Vonage has repeatedly asserted that Vonage has produced all responsive documents which exist and can be located. *E.g.*, Email from McPhail to Strand (April 6, 2007) (“ALL RESPONSIVE DOCUMENTS have been produced to Sprint, to the extent that they could be located (either in the location suggested by Mr. Rego at his deposition or in some alternative location).”) (emphasis in original), Exhibit F. But Mr. Rego specifically testified that budgets from 2003 existed as of the time of his deposition. Rego Dep. 80:20-81:7 (“That budget exists.”). Further, Mr. Rego testified that the budget goes through multiple drafts, but once it is finalized, it “is stamped with an F for final.” Rego Dep. 81:8-82:6. None of the Excel files produced by Vonage was marked in this manner, either in the filename or the document itself. Mr. Rego testified that these files could be found on his computer as well as “an accounting drive dedicated for accounting and finance information.” Rego Dep. 68:2-6. If these files no longer exist, Sprint requests that counsel for Vonage adequately explain their disappearance.

Finally, Sprint notes that Vonage has not argued that Sprint’s request for these budgets in their native format is objectionable, only that the files could not be located. Therefore, Sprint seeks the Court’s assistance in compelling the remaining Excel files identified by Mr. Rego.

Respectfully submitted,

Dated: April 17, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2007, a true and accurate copy of the above and foregoing **Sprint's Reply to Vonage's Response to Sprint's Motion to Compel Production of Financial Documents** were e-filed with the Court, which sent notice to the following:

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