

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the)	DOCKET NO. UT-051291
)	
Request of Sprint Nextel Corporation for an Order Declining to Assert Jurisdiction Over or, in the Alternative, Application of Sprint Nextel Corporation for Approval of the Transfer of Control of United Telephone Company of the Northwest and Sprint Long Distance, Inc. From Sprint Nextel Corporation to LTD Holding Company.)	PUBLIC COUNSEL RENEWED MOTION FOR CONTINUANCE; MOTION FOR LEAVE TO FILE CROSS-REBUTTAL
)	
.....)	

I. MOTIONS

1. Pursuant to WAC 480-07-385, the Public Counsel Section of the Washington State Attorney General’s Office (“Public Counsel”) respectfully renews its request for a continuance of the schedule set in this matter in Order No. 01 issued on October 12, 2005. Specifically, Public Counsel requests that the date for hearing be continued 30 days, to February 23, 2006, or other date convenient to the Commission. Public Counsel also requests that, if the continuance is allowed, that the date for rebuttal be continued to January 6, 2005.
2. Public Counsel respectfully requests leave to file cross-rebuttal testimony in this case on the date set by the Commission for rebuttal testimony by the applicants.
3. Commission Staff counsel has advised that Staff does not oppose either motion, but reserves the right to request surrebuttal if necessary. Staff requests that no hearing be held on February 24 due to a prior conflict of counsel. Counsel for Sprint-Nextel was contacted prior to the motion but has not advised of the applicants’ position on the motions as of the time of filing.
4. Public Counsel has no objection to modification of the schedule to allow for a single round of post-hearing briefs.

II. BACKGROUND

5. The Prehearing Conference Order, Order No. 01, established a schedule for this proceeding with a rebuttal testimony date of December 28, 2005, and evidentiary hearing dates of January 23-27, 2006. Public Counsel had raised concerns about this schedule at the prehearing conference because, *inter alia*, the evidentiary hearing in the PacifiCorp general rate case is set for January 9-20, concluding the Friday before the Monday start of the hearing in this case. After the schedule was adopted, on October 21, 2005, Public Counsel filed a Petition for Interlocutory Review of Order No. 1 Regarding Hearing Dates. The petition was denied, without prejudice, in Order No. 03 on November 9, 2005.
6. On November 30, 2005, Staff and Public Counsel filed testimony of seven witnesses responding to the Sprint-Nextel petition and testimony in this case.
7. In November 2005, Public Counsel attorney Robert Cromwell accepted a position outside the Attorney General's office. He left Public Counsel on December 1, 2005. At or about the time of this motion, Public Counsel expects to have Mr. Cromwell's position filled with a new attorney. However, the undersigned counsel, Simon ffitich will be lead counsel on all Public Counsel matters and substitutions of counsel have been filed.

III. MEMORANDUM

A. Grounds for Request for Continuance.

8. Order No. 03 denied, without prejudice, Public Counsel's initial request to continue the hearing dates, finding the motion was premature. Order No. 03, ¶5. The order noted that "the Commission and the parties will be better informed regarding potential conflicts in hearing and briefing obligations later this year, or early in 2006. Public Counsel can consider renewing its request for a continuance of the hearing dates and, if appropriate, other process changes...closer in time to the currently scheduled hearing dates." *Id.*, ¶6. Public Counsel respectfully submits that the motion to continue is no longer premature and is reasonable for the following reasons:

9. Mr. Cromwell's unanticipated departure from the office creates new practical problems for Public Counsel related to the transition. First, because Mr. Cromwell was lead counsel on both this matter and the PacifiCorp general rate case, the undersigned and any new counsel will require time to become acquainted with the facts, witnesses, issues and evidence in both matters sufficient to effectively represent consumers at hearing and on brief.
10. Second, while new counsel will be of significant assistance, Mr. ffitich will need to remain as lead counsel on both matters.
11. Third, the juxtaposition of the PacifiCorp and Sprint hearings makes it impossible as a practical matter to adequately prepare and conduct the Sprint hearing with only two weekend days to prepare. This timing is not consistent with due process or with counsel's ethical obligations.
12. Another new factor that has become more clear since Order No. 03 was entered is that the hearing will require substantial preparation and resources to conduct. Filed after Order No. 03, the testimony of the seven witnesses (five for Staff, two for Public Counsel) raises complex and significant issues that can be expected to arise in the hearing and briefs including financial structure of the "spin-off" local company and directory imputation. Staff's testimony also raises an additional "rate-rebalancing" issue (see below).
13. Finally, the scope and scale of the PacifiCorp general rate case is now also more clear. Extensive testimony filed in early November by Staff, ICNU, Public Counsel *inter alia*, indicates that that case also involves very substantial issues, not only as to cost of capital and revenue requirement, but also regarding multi-state cost allocation, and the proposed power cost adjustment mechanism (PCAM). There is wide divergence between the parties' positions. The hearing in January is likely to require extensive effort and resources from the parties and to require all the time scheduled.

B. Grounds for Request for Leave to File Cross-Rebuttal.

14. Public Counsel respectfully requests leave to file cross-rebuttal with respect to rate-rebalancing as raised primarily in the testimony of Staff witnesses Wilford Saunders, Tim Zawislak and Paula Strain. Public Counsel did not address the issue in its pre-filed direct because rate-rebalancing was not proposed by the applicants and it was unclear at the time of filing whether the issue would be raised by other parties. Staff had indicated at the prehearing conference that was it still considering whether to argue for rate rebalancing. Order No. 01, ¶7. Because Staff has now addressed the issue in testimony, and because of the potential major impact on ratepayers, as a matter of fairness and due process, Public Counsel requests the opportunity to address this issue in testimony.

IV. CONCLUSION

15. For the foregoing reasons Public Counsel respectfully requests that:

16. 1. The Commission modify the procedural schedule adopted in Order No. 1 to set hearings to begin February 23, 2006, or later, and to continue the date for rebuttal to January 6, 2006.

17. 2. The Commission grant leave to file cross-rebuttal testimony on the date set for rebuttal in this matter.

18. DATED this 8th day of December, 2005.

ROB MCKENNA
Attorney General

Simon J. ffitch
Assistant Attorney General
Public Counsel