

Continuance of the procedural schedule both would prejudice Sprint and lacks sufficient good cause.

3. Sprint seeks Commission approval of the transfer of the Sprint incumbent local exchange carrier ("ILEC") and other wireline subsidiaries from Sprint Nextel to LTD Holding Company. The essential reason for the separation is to allow the two companies to move forward independently to develop their diverging businesses and to better serve customers. Sprint's prefiled testimony amply demonstrates that significant delay in completing that task unreasonably postpones these benefits to customers, employees and the competitive environment.
4. Delayed approval of the application will also cause unnecessary expenses, impair the Companies' abilities to accomplish a smooth transition internally and for its customers, and stifle development of new business plans and operations. All beginning with approximately the same initial filing dates, 13 other state commissions² have either approved the transfer of control, established schedules that include hearings in early December³ or January, or are following a process that would allow for timely decisions approving the separation before April 2006.⁴ Indeed, as of today, 5 states have approved the separation. When coupled with states not requiring approval, these approvals include over 48% percent of the access lines of LTD Holding Company. Significant delay in the

² State Commission approval is only required in 14 of 18 states where LTD Holding Company will operate.

³ For example, Pennsylvania, Nevada, and South Carolina have all conducted hearings in December.

⁴ See Exhibit A which contains a chart of the status of each state proceeding.

procedural schedule in Washington thus could delay the entire separation and would have a negative impact far beyond the borders of this state.

5. The state commissions in Nebraska, Ohio, Wyoming, South Carolina, and Nevada have already approved the spin transaction. In so doing, these commissions have recognized that the transaction is “fair and reasonable and in the public interest,”⁵ and that “consumers will benefit from the new company’s single-minded focus on the local exchange market and the elimination of the tension between the new focus and Sprint Nextel’s stated national wireless strategy.”⁶ The Ohio commission concluded that the “proposed transaction as a whole will promote the public convenience and result in the provision of adequate service” as well as “promote the state’s telecommunications policy of competition, diversity and customer choice.”⁷ Public Counsel’s Motion threatens Sprint’s ability to implement the transaction and provide these benefits.
6. Sprint is not unsympathetic to Public Counsel’s situation. The Commission should note, however, that Mr. Cromwell announced his departure over two months before the hearings are scheduled to begin. Bringing new counsel up to speed will certainly take some time and effort, but it should not take longer than the almost five weeks now remaining until the commencement of the hearings.

⁵ See *Matter of Application of Sprint Nextel Corporation, et al.*, Opinion and Findings, Application No.C-3474 (Nov. 1, 2005).

⁶ See *Matter of the Joint Application of Sprint Nextel and LTD Holding Company for Consent and Approval of a Transfer of Control*, Opinion and Order, Case No.05-1040-TP-ACO (Dec.7, 2005) at 11.

⁷ *Id.* at 17.

7. The Commission, therefore, should deny Public Counsel's Motion. If the Commission nevertheless determines that some continuance of the hearings is warranted, the Commission should revise the entire remaining schedule to ensure that the Commission can issue its decision by the end of March 2006. Such a schedule would have the hearings begin on February 6, 2006 (a two week delay), a single round of simultaneous post-hearing briefs due on February 24, 2006, and a target date for Commission decision of March 31, 2006. Such a schedule is comparable to the schedule in the Verizon-MCI merger proceeding, Docket No. UT-050814, which presented far more complex issues than those presented in this proceeding.

Motion for Leave to File Cross-Rebuttal

8. Sprint opposes Public Counsel's request to file cross-rebuttal testimony on the issue of rate rebalancing. Order No. 1 specifically references this issue, and it is clear from the transcript of the prehearing conference that Staff would be aggressively pursuing the issue. Staff counsel stated,

It would likely be a revenue-neutral rate rebalancing of access charges or retail rates **Those would be the two issues the Staff would like to include and intends to examine in determining whether the transfer is in the public interest.**⁸

Thus, the prehearing conference order did not simply suggest that Staff might raise the issue, it ratified Staff's clear request to include these issues in the litigation.

9. Staff's subsequent actions were consistent with its expressed intent. Many of Staff's discovery requests sought information pertinent to rate rebalancing, and Public Counsel was provided with copies of these discovery requests and Sprint's responses. In fact,

⁸ TR at 8, lines 9-21 (emphasis added).

Sprint first provided responses to such discovery on November 1, 2005, a month in advance of Public Counsel's direct testimony. Thus, Public Counsel should have known that rate rebalancing would be addressed by Staff in its direct testimony. Public Counsel had notice of the issue and had every opportunity to fully address the issue in its direct testimony. Indeed, Public Counsel's direct testimony includes a substantial discussion of directory imputation – the other issue that Staff identified during the prehearing conference and that is included in paragraph seven of Order No. 1 – even though that issue “was not proposed by the applicants and it was unclear at the time of filing whether the issue would be raised by other parties.”⁹

10. Permitting Public Counsel to file cross-rebuttal testimony also would complicate and threaten to delay the procedural schedule. Not surprisingly, Staff has expressed its intent to request permission to file reply testimony should the Commission grant Public Counsel's motion for cross-rebuttal. Sprint, as the applicant, would also be entitled to file testimony responding to Public Counsel's cross-rebuttal testimony, as well as to any reply testimony the Commission authorizes Staff to file. There simply is insufficient time in the schedule to accommodate these additional rounds of testimony prior to the hearings, and as discussed above, any significant delay in the procedural schedule would unreasonably prejudice Sprint.
11. Public Counsel will have an opportunity to cross-examine the Staff and Sprint witnesses who testify on rate rebalancing at the hearings and to address the issue in its post-hearing briefing. The Commission should conclude that this satisfies fairness and due process in

⁹ Motion ¶ 4.

light of Public Counsel's failure to take advantage of the opportunity to include rate rebalancing in its direct testimony.

Conclusion

12. For the foregoing reasons, the Commission should deny Public Counsel's Motion.

Dated this 12th day of December 2005.

By: 

Gregory J. Kopta
WSBA No. 20519
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1988
206/628-7692
206/628-7699 (fax)
gregkopta@dwt.com

Tre Hendricks
WSBA No. 29786
Sprint Corporation
902 Wasco Street
Hood River, OR 97031
541/387-9439
541/387-9753 (fax)
tre.e.hendricks.iii@sprint.com

ATTORNEYS FOR SPRINT

EXHIBIT A

Status of State LTD Separation Proceedings a/o December 8, 2005:

<i>State PUC</i>	<i>Docket or Case No.</i>	<i>Hearings/Action Taken</i>
Florida	050551-TP	Hearing December 20, 2005 (1)
Kansas	06-SCCC-200-MIS	Hearing March 2006
Minnesota	P6478, 430/PA-05-1352	Hearing January 5, 2006
Missouri	IO-2006-0086	Pre-hearing December 16, 2005 (2)
Nebraska	C-3472	Approved November 1, 2005
Nevada	05-8032	Approved December 5, 2005
New Jersey	TM05080739	Hearing January, 2006
Ohio	05-1040-TP-ACO	Approved December 7, 2005
Pennsylvania	A-313200-F0007	Hearing held 12/2/2005
South Carolina	2005-246-C	Approved December 8, 2005
Tennessee	05-00240	January 2006
Virginia	PUC-2005-00118	Statutory Date March 24, 2006
Washington	UT-051291	January 2006
Wyoming	70009-TA-5-243	Approved October 25, 2005

(1) The Florida PSC Staff has recommended approval and the Commission has granted its approval, subject to protest, and plans to take final action regarding any protests on December 20, 2005.

(2) Pursuant to the MoPSC's request the MoPSC Staff has reviewed the filings of Sprint Nextel and made a favorable recommendation on 11/18. Sprint Nextel has responded and a pre-hearing conference has been scheduled by the MoPSC for December 16, 2005.

Note: No formal state commission action is required in the following LTD states: Indiana, North Carolina, Oregon, and Texas.