

**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)	ORDER NO. 04
Alternative, Application of Sprint)	
Nextel Corporation for Approval of)	GRANTING, IN PART, MOTION
the Transfer of Control of United)	FOR CONTINUANCE; DENYING
Telephone Company of the Northwest)	MOTION FOR LEAVE TO FILE
and Sprint Long Distance, Inc. From)	CROSS-REBUTTAL
Sprint Nextel Corporation to LTD)	
Holding Company.)	
.....)	

1 **PROCEEDINGS:** On August 26, 2005, Sprint Nextel Corporation filed with the Commission a request for an order declining to assert jurisdiction over or, in the alternative, an application 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. The Commission conducted a prehearing conference on October 7, 2005, before Administrative Law Judge (ALJ) Dennis J. Moss, and entered its Order No. 01 Prehearing Conference Order on October 12, 2005. Order No. 01 includes a procedural schedule, as discussed during the prehearing conference.

2 **PARTY REPRESENTATIVES:** Tre Hendricks, III, attorney, Sprint Corporation, Hood River, Oregon, and Gregory J. Kopta, Davis Wright Tremaine L.L.P., Seattle, Washington, represent Sprint Nextel. Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General. Gregory J. Trautman, Assistant

Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").

- 3 **MOTIONS FOR CONTINUANCE AND LEAVE TO FILE CROSS-REBUTTAL:** On October 21, 2005, Public Counsel filed its Petition for Interlocutory Review of Order No. 01 Regarding the Hearing Dates. Public Counsel asserted that the hearing dates set following the Commission's first prehearing conference in this proceeding, January 23 – 27, 2006, would prejudice Public Counsel because they follow closely hearings in a PacifiCorp general rate case scheduled for January 7 – 20, 2006, in Docket No. UE-050684, and are immediately before the January 30, 2006, date scheduled for briefs in the PacifiCorp/MidAmerican proceeding, Docket No. UE-051090. Public Counsel requested that the hearings in this proceeding be set for February 14 – 17, 2006.
- 4 The Commission denied Public Counsel's Petition as being premature, without prejudice to Public Counsel's right to later seek a continuance of the hearing dates, either via an agreed request or, absent agreement, a contested motion.
- 5 On December 8, 2005, Public Counsel filed its Renewed Motion for Continuance and Motion for Leave to File Cross-Rebuttal. 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 requests that, if the continuance of the hearing is allowed, that the Commission also continue the December 28, 2005 date now set for filing rebuttal testimony to January 6, 2006.
- 6 Public Counsel also requests leave to file cross-rebuttal to Staff's response testimony concerning rate re-balancing. Public Counsel states it 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 did file testimony on this issue and Public Counsel now asserts it should have an opportunity to address the issue through prefiled

testimony. Public Counsel states that Commission Staff counsel has advised that Staff does not oppose Public Counsel's motion, but reserves the right to request an opportunity to file surrebuttal testimony.¹

7 **SPRINT RESPONSE OPPOSING PUBLIC COUNSEL'S MOTIONS:** Sprint filed its response opposing Public Counsel's motions on December 13, 2005. Sprint contends that continuance of the procedural schedule both would prejudice Sprint and lacks sufficient good cause.

8 Sprint argues that if the Commission nevertheless determines that some continuance of the hearings is warranted, the Commission should revise the 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.

9 Sprint points out that Order No. 01 specifically references the rate rebalancing issue, and states that it is clear from the transcript of the prehearing conference that Staff would pursue the issue. Sprint quotes, in part, Staff Counsel's statement at prehearing that Staff

wanted to make sure that the prehearing conference order articulates that there are two particular issues Staff wishes to address, among others, in determining the public interest of the transaction. One would be the possible imputation of Yellow Pages revenues and/or the effect on rates in light of the fact that the Yellow Pages has been sold ...

¹ Staff confirms this in its Response to Public Counsel's motions.

Second would be investigating a possible rate rebalancing. It would likely be a revenue-neutral rate rebalancing of access charges or retail rates, again in light of the fact that it will now be a stand-alone company without the benefit of having the tie-in to the parent, and Staff is concerned with the large cross-subsidies that are currently in place in Sprint and also some of the high access charges, and it needs to examine whether that's sustainable in light of the fact that there is a proposal for a stand-alone company. Those would be two issues that the Staff would like to include and intends to examine in determining whether the transfer is in the public interest.²

10 Sprint states that Staff has propounded extensive discovery on the rate rebalancing issue and that Public Counsel has been provided both Staff's data requests and Sprint's responses, the earliest of which were provided on November 1, 2005, a full month before the date for response testimony. Sprint argues that Public Counsel had notice of the issue and had every opportunity to fully address the issue in its direct testimony.

11 **COMMISSION DETERMINATION:** The Commission, finding good cause and the absence of prejudice to any party, concludes it should grant, in part, Public Counsel's Motion for Continuance.

12 The Commission previously acknowledged the pressing schedule faced by Public Counsel, other parties, and the Commission itself during the relevant period. Public Counsel now faces the additional challenges posed by a change in personnel and Mr. ffitch's assumption of lead-counsel duty in all pending matters before the Commission in which Public Counsel participates as a

² Tr. 8:8-21.

statutory party. Thus, we find good cause to continue the procedural schedule, albeit more briefly than Public Counsel requests.

13 Sprint's assertion that it would be prejudiced by delay is tied to Public Counsel's request for continuance of the hearing until late February. Sprint argues that such delay in the Commission's consideration of the company's application for approval of the transfer of the Sprint incumbent local exchange carrier ("ILEC") and other wireline subsidiaries from Sprint Nextel to LTD Holding Company will cause unnecessary expenses, impair the affiliated companies' abilities to accomplish a smooth transition internally, and stifle development of new business plans and operations. Sprint states that 13 other state commissions, where Sprint filed for approval of its proposed corporate restructuring at about the same time it applied in Washington, have either approved the transfer of control, established schedules that include hearings in early December or January, or are following a process that would allow for timely decisions approving the separation before April 2006. Sprint states that five states have already approved the separation. Sprint argues that "significant delay in the procedural schedule in Washington thus could delay the entire separation and would have a negative impact far beyond the borders of this state."

14 Although we do not find that Sprint necessarily would be prejudiced if we delayed our proceeding by 30 days, or even longer, the Commission strives to balance the interests of the parties before it in individual proceedings. It is clear that Sprint has a strong interest in learning at an early date whether it will be authorized to consummate its plans and, if so, whether the Commission will impose conditions on approval. It is equally clear that Sprint does not regard a continuance of the hearing to the week of February 6, 2006, as causing a delay that would potentially prejudice the company's interests.

15 The Commission finds that continuing the date for the commencement of evidentiary hearings until February 6, 2006, strikes an appropriate balance

between Public Counsel's interest in having some additional time to prepare for hearing, and Sprint's interest in early resolution of its application. In addition, we will change the filing date for rebuttal testimony to January 6, 2006, as Public Counsel requests. We will further adjust our procedural schedule to provide for initial briefs to be submitted electronically by noon on February 24, 2006 with official filing to occur upon the delivery of hard copy to the Commission on February 27, 2006. We will set March 3, 2006, as the date for reply briefs to be submitted electronically by noon, with official filing to occur upon the delivery of hard copy to the Commission on March 6, 2006.³

16 We turn to Public Counsel's request for leave to file cross-rebuttal testimony on the issue of rate rebalancing. We agree with Sprint that Public Counsel had its opportunity to develop and prefile testimony on this subject, just as Staff did, yet let that opportunity pass. If Public Counsel opposes Staff's proposals concerning rate rebalancing, its due process rights are adequately preserved by the opportunity for cross-examination of Staff's witnesses and the opportunity to present argument on brief. Allowing Public Counsel to file cross-rebuttal testimony opposing Staff, and perhaps proposing some alternative form of rate rebalancing almost certainly would lead to a request from Staff or Sprint for leave to file surrebuttal testimony. If Public Counsel supports Staff on this issue, cross-rebuttal would not be an appropriate opportunity to afford Public Counsel. Again, such "cross-rebuttal" almost certainly would lead to the need to offer Sprint an opportunity to file surrebuttal testimony.

17 The Commission finds that it is not appropriate to allow cross-rebuttal testimony on an issue identified at the outset of this proceeding as one that Staff would pursue. Public Counsel had the same opportunity as Staff to file testimony on

³ The Commission recognizes the parties' suggestion that a single round of briefs may be sufficient. However, the Commission often finds reply briefs helpful. We will preserve the opportunity for reply briefs at this time, as indicated, subject to reconsideration at the time of our evidentiary hearing.

this issue, yet elected not to do so. Public Counsel's request is not timely. Public Counsel's request would open the door to requests for additional rounds of testimony. This would unduly complicate this proceeding and potentially cause unnecessary delay. The Commission concludes it should deny Public Counsel's Motion for Leave to File Cross-Rebuttal.

ORDER

THE COMMISSION ORDERS That

- 18 Public Counsel's Motion for Continuance is granted in part, as discussed in the body of this Order.
- 19 Public Counsel's Motion for Leave to File Cross-Rebuttal is denied.

DATED at Olympia, Washington, and effective this 13th day of December, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge