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1 P R O C E E D I N G S

2 JUDGE CAILLE: We are here for a prehearing
3 conference in Docket No. UT-021053, encaptioned
4 Ritzville Warehouse Company versus Sprint
5 Communications Company. This is a complaint brought by
6 Ritzville Warehouse Company that alleges that Sprint
7 billed Ritzville for T-1 data circuit service that was
8 never functional.

9 My name is Karen Caille, and I'm the
10 presiding administrative law judge in this proceeding.
11 Today is October the 10th, 2002, and we are convened in
12 a hearing room at the Commission's offices in Olympia,
13 Washington. Prior to going on the record today, I went
14 over an agenda for our hearing today, and the first
15 item on that agenda is to take appearances, and we will
16 begin with the Complainant, Mr. Bourne, for Ritzville
17 Warehouse, and if you will please state your name, whom
18 you represent, your business address, telephone, fax
19 number, and e-mail address.

20 MR. BOURNE: My name is Howard Bourne. I
21 represent Ritzville Warehouse Company, 201 East First
22 in Ritzville, Washington, 99169. Our telephone number
23 there is (509) 659-0130, and the fax number is (509)
24 659-1101.

25 JUDGE CAILLE: E-mail address?

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1 MR. BOURNE: hbourne@agritel.net.

2 JUDGE CAILLE: Could you please repeat the
3 telephone number again?

4 MR. BOURNE: (509) 659-0130. That is also
5 not on my card. That card is my private business
6 versus the warehouse business.

7 JUDGE CAILLE: For Sprint?

8 MR. HENDRICKS: Trey Hendricks for Sprint.
9 The address is 902 Wasco Street, Hood River, Oregon,
10 97031. Phone is (541) 387-9439. Fax is (541) 387-9753,
11 and my e-mail address is
12 tre.e.hendricks.iii@mail.sprint.com. As I said, it's
13 very long. I've tried to have that changed.

14 JUDGE CAILLE: Let the record reflect there
15 are no other appearances. I think perhaps the first
16 order of business today should be some discussion on
17 the motion to dismiss. Sprint filed a motion to
18 dismiss on September the 10th, 2002. Ritzville filed a
19 response to that motion on September 20th, 2002. I
20 would ask the parties if either of you would like any
21 further argument on that motion? If not, I'm prepared
22 to rule.

23 MR. HENDRICKS: Some new facts have come to
24 Sprint's attention, and I thought that the Commission
25 should know about them, and I wasn't aware of this, and

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1 it may, in fact, be to the motion's detriment;
2 although, I'm not sure it's to Sprint's detriment.

3 I was speaking with Mr. Bourne earlier this
4 afternoon, and apparently, Mr. Bourne is currently the
5 only affiliated person with Agritel, the subsidiary
6 that provides Internet service in Eastern Washington.
7 In other words, there is no other qualified
8 representative at Agritel, and in light of that, I
9 would simply leave it to the Commission to determine
10 whether or not Ritzville should designate an
11 appropriate employee or legal representative, but I'm
12 not certain the motion to dismiss the same facts exist
13 that I was aware of at the time I filed the motion to
14 dismiss.

15 JUDGE CAILLE: Would you like to say
16 anything, Mr. Bourne?

17 MR. BOURNE: No. I stand by what I said in
18 my reply. I don't know that we should be forced to go
19 out and hire legal counsel to represent us in a case
20 like this, and it doesn't change -- whether I'm a
21 lawyer or not or my position with the Company doesn't
22 change the facts of the case, as far as I'm concerned.

23 JUDGE CAILLE: I would note for the record
24 that attached to the response or the reply to the
25 motion to dismiss that was filed by Ritzville Warehouse

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1 that there is a letter from Ritzville that indicates
2 that the board of directors of Ritzville had asked
3 Mr. Bourne to represent their interests in this case.
4 With that, I pretty much feel that that has cured the
5 problem, if there is a problem, with Mr. Bourne
6 representing Ritzville.

7 As you know, if we go to hearing, you will be
8 required to pretty much act pro se, and you will need
9 to be able to cross-examine witnesses, and I will
10 assist in the procedural part of it, but I cannot help
11 you substantively. You should just be aware of that,
12 because your opponent is an attorney. So having said
13 that, my ruling would be to deny the motion to dismiss
14 and allow Mr. Bourne to represent Ritzville. I just
15 noticed that counsel for staff has just appeared.
16 Would you like to enter your appearance, Mr. Thompson?

17 MR. THOMPSON: This is Jonathan Thompson,
18 assistant attorney general, representing the Commission
19 staff. Do you want me to give the long address?

20 JUDGE CAILLE: Yes.

21 MR. THOMPSON: My mailing address is 1400
22 South Evergreen Park Drive Southwest, P.O. Box 40128,
23 and it's Olympia, 98504. My telephone is (360)
24 664-1225, and e-mail address is jthomps@wutc.wa.gov.

25 JUDGE CAILLE: How about facsimile?

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1 MR. THOMPSON: That is (360) 586-5522. I
2 apologize for showing up late. At this point, I don't
3 think Staff, however, is going to take an active role
4 in the case, but I did want to put in an appearance
5 just to reserve that possibility.

6 JUDGE CAILLE: Thank you. Just so you know
7 where we are, I just ruled on Sprint's motion to
8 dismiss and I denied the motion. Are there any other
9 motions that should come before the Bench this
10 afternoon?

11 Before we talk about discovery, have the
12 parties had an opportunity to talk to one another, and
13 have you made any attempts to resolve?

14 MR. HENDRICKS: This afternoon about 15
15 minutes before the conference was our first opportunity
16 to talk. I would have contacted Ritzville sooner, but
17 I wanted to be certain that we had the appropriate
18 representative from the Company before I talked
19 settlement discussion, so we've had just a brief
20 opportunity to talk.

21 JUDGE CAILLE: Why don't we go ahead and set
22 a schedule and go through what we normally go through
23 for a prehearing conference, and I encourage you to
24 attempt to settle this matter, and the Commission does
25 have a mediator that could assist you if you need it.

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1 This seems like the type of issue that would be
2 conducive to a settlement or a mediation.

3 Having said that, one of the things we do,
4 Mr. Bourne, in a hearing, we share information, and the
5 way that you do that is through the discovery process,
6 and we have a rule, 480-09-480, that we often invoke in
7 order to officially start that process, and I guess I
8 would like to ask of the parties whether you would like
9 me to invoke that discovery rule. Are you going to
10 need information from Sprint?

11 MR. BOURNE: I don't believe so, no.

12 JUDGE CAILLE: Mr. Hendricks?

13 MR. HENDRICKS: Sprint is not intending to
14 conduct any discovery.

15 JUDGE CAILLE: And that would also take care
16 of, I assume, a protective order since a protective
17 order is an order that protects the confidentiality of
18 documents. So if you aren't asking for any documents,
19 you won't need a protective order.

20 The next topic I would like to address
21 briefly is the area of issues. From the pleadings,
22 this looks to me like it's a billing dispute for
23 service that was not functional. At least that's the
24 allegation. Are there any other issues that I should
25 be aware of?

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1 MR. BOURNE: By "other issues," what do you
2 mean? I've got a list of notes that I've written here
3 this morning of things in addition to what I put in my
4 complaint on my position.

5 JUDGE CAILLE: Why don't we hear what those
6 are, Mr. Bourne.

7 MR. BOURNE: Our position is that we were
8 billed, Ritzville Warehouse was being billed for
9 service that was never completed. Our position has
10 been the same from day one. The circuit didn't work.
11 Sales personnel from Sprint in some of the e-mail admit
12 to that, admit there is problems on their end, on
13 Ritzville's router end, and with the local exchange
14 company, Century Tel. If we got problems in those
15 three places, there is nothing else to a circuit. It's
16 obvious the circuit didn't work.

17 We filed an informal complaint with the
18 Commission in December, I believe it was, of 2001,
19 which was ruled in our favor for effectively being
20 because Sprint didn't even follow their own rules and
21 regulations by having us contact their tech support
22 when we had trouble. I don't remember what else was in
23 there, but in that informal complaint, Sprint submitted
24 some information to the rep with a graph showing that
25 we had put data on the circuit. That graph does not

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1 even reference the circuit in question. It's not a
2 Ritzville Warehouse circuit. We think that was
3 submitted falsely.

4 In addition in there, there is information
5 that Sprint contacted a representative from Ritzville
6 Warehouse January 9th, 2002, contacted Wendy Brodahl
7 from Ritzville Warehouse. Ms. Brodahl had been
8 terminated in October of 2001 and left the Company
9 under less than amicable circumstances. If they
10 contacted her, they contacted her at home, and it would
11 not surprise me that she would say everything was fine.
12 She's not a friend of Ritzville Warehouse; let's put it
13 that way.

14 So I think those two issues, the graph and
15 the contact with Ms. Brodahl, I think is some false
16 information on their side that should be thrown out,
17 and I think it shows a history or a policy of the
18 Company to do everything they can to try and prove us
19 wrong. Ritzville Warehouse never put any data on that
20 circuit. They never went through the process of
21 converting to it. It would have taken a lot of time to
22 do that.

23 JUDGE CAILLE: I don't think that the things
24 that you've mentioned just now change your complaint or
25 that you would need to amend your complaint. I think

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1 these are things that you said that support your
2 complaint or are arguments in support of your
3 complaint. Mr. Bourne, are you going to be the only
4 person testifying?

5 MR. BOURNE: Probably.

6 JUDGE CAILLE: Then Mr. Hendricks --

7 MR. BOURNE: Can I follow that up a little
8 bit? All of the parties that were there at the time
9 the circuit was ordered and terminated are no longer
10 with the Ritzville Warehouse. And I understand we have
11 some similar problems on the Sprint side of it too, but
12 there is no one there, and the three main parties at
13 Ritzville Warehouse that left were all under -- it was
14 not of their choice to leave the Company, so
15 information we get from them may be tainted.

16 JUDGE CAILLE: Mr. Hendricks, do you know how
17 many witnesses you might be calling?

18 MR. HENDRICKS: If this went to hearing, we
19 would probably call two witnesses from Sprint, would be
20 my guess, and might also have an interest in hearing
21 the testimony of some of the employees of Ritzville,
22 maybe one employee from Ritzville that was an employee
23 of the Company at the time the events were taking
24 place.

25 JUDGE CAILLE: I think at this point, we can

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1 move on to the procedural schedule. Mr. Bourne,
2 normally what we do as parties are the witnesses file
3 prefiled testimony, and that is in question and answer
4 form, and the Complainant files first and then the
5 Respondent files, and then you are given an opportunity
6 to file some rebuttal testimony. So we would set out a
7 schedule for that. I'm thinking that perhaps maybe
8 someone in the records center can give you an example
9 of what that looks like so that you have an idea.

10 MR. BOURNE: These are questions that I would
11 provide to those witnesses?

12 JUDGE CAILLE: No. So if you are the
13 witness, you would be asking those questions of
14 yourself to elicit the information that would support
15 your complaint.

16 MR. BOURNE: Understood.

17 JUDGE CAILLE: In addition, there are usually
18 exhibits that the parties provide that support their
19 position. That's where the discovery might come in, so
20 if there is a change about a request for discovery, if
21 either of you please contact me, we can invoke the
22 discovery rule.

23 So this testimony gets filed before the
24 hearing, and usually, the rebuttal is filed maybe two
25 weeks before the hearing. Sounds like there is not

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1 going to be much in the way of exhibits or witnesses,
2 so I think that one day of hearing would be enough, and
3 I'm somewhat reticent -- well, Mr. Bourne, do you think
4 you could write a brief after the hearing, maybe a
5 statement of the position and facts supporting it or
6 whatever?

7 MR. BOURNE: Something in addition to what
8 I've already filed?

9 JUDGE CAILLE: Only if there is more
10 information, and you may have more information after
11 the hearing, so why don't we just leave the process
12 open after the hearing. Normally what happens is the
13 parties file briefs, but this case might not be
14 conducive to that. Mr. Hendricks?

15 MR. HENDRICKS: If we do go to hearing, I
16 think that Sprint would want to have an opportunity to
17 address the legal issues, and a brief would be the most
18 appropriate place to do that, and I wouldn't
19 anticipate, considering the complexity of the case,
20 that the briefs would be very long, but I think Sprint
21 would want that opportunity.

22 JUDGE CAILLE: Then you would probably want
23 to file something too, Mr. Bourne, but we aren't there
24 yet. One of the things I would really encourage the
25 parties, to please explain in your testimony what this

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1 is about, because I'm having a hard time visualizing.
2 If there is technical stuff, if you can please explain
3 it or provide a drawing, anything that would assist me,
4 that would be great, and I don't know if that's even
5 needed. Just in case it is.

6 I didn't bring my calendar with me so I'm
7 going to have to go get it. Maybe if you would like to
8 discuss a little bit about scheduling, I'll be right
9 back with my schedule to make sure I'm available.

10 (Recess.)

11 JUDGE CAILLE: Let's be back on the record.
12 Pursuant to an off-record discussion, we have come to
13 an agreement on a schedule. The parties will file
14 simultaneous direct testimony on October the 31st.
15 Simultaneous response testimony will be filed on
16 November the 8th, and the hearing will be held at 9:30
17 on November the 15th. Let's go off the record for just
18 a moment.

19 (Recess.)

20 JUDGE CAILLE: The hearing will now be held
21 beginning at 9:30 on November the 14th. Commission has
22 an open meeting on November the 15th, so the hearing
23 room is not available, and the other room is only
24 available for a limited amount of time on that day.

25 Let me just explain. I will be writing what

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1 we call a prehearing conference order that sets forth
2 all of what we discussed today, well, basically all of
3 what we discussed today, and it has an appendix on how
4 to identify your testimony and exhibits, and
5 Mr. Bourne, probably what I will do is give you the
6 number of one of my support staff if you have any
7 questions because they know how to handle the exhibits
8 and testimony.

9 Just as a reminder to everyone and to you,
10 Mr. Bourne, on our filings, we will need an original
11 plus 11 copies. I believe you had like 19. That's the
12 general rule, but I've checked and we will only need 11
13 copies, so for this docket, I'm designating just 11
14 copies. Please remember that all filings must be made
15 through the Commission secretary either by mail to the
16 secretary at WUTC, P.O. Box 47250, 1300 South Evergreen
17 Park Drive Southwest, Olympia, Washington, 98504-7250.

18 We require that filings of substance, and
19 that would mean testimony, briefs, motions, answers,
20 include an electronic copy on a three-and-a-half IBM
21 formatted high-density disk in PDF Adobe Acrobat format
22 so that will reflect the pagination of your original.
23 We also ask that you send your text in your choice of
24 Word 97 or later or Word Perfect 6.0 or later.

25 Service on all parties must be simultaneous

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1 with filing, and ordinarily, the Commission will not
2 accept filings by facsimile, so please don't rely on
3 that without prior permission from me, and I will grant
4 a request if there are extraordinary circumstances, and
5 both of you are out of town, pretty far out of town, as
6 a matter of fact. If necessary, I would allow you to
7 file by fax, but you will need to then follow it up
8 with a hard copy the next day.

9 I've already told that you I will be entering
10 this prehearing conference order, and that will explain
11 a lot of the procedure for the hearing and for filing
12 your testimony. Again, I remind you that the
13 Commission encourages settlement and encourages
14 stipulations both as to the facts and the issues to be
15 resolved. Please keep the Commission informed of any
16 progress you might make towards settlement. Are there
17 any questions or any other business to come before the
18 Commission?

19 MR. BOURNE: I have a couple of questions.
20 You talk about this being a three-and-a-half-inch Adobe
21 PDF file. Are you saying that I have to file it in
22 that format?

23 JUDGE CAILLE: Well, if you can't, I think
24 there are other ways to do this.

25 MR. BOURNE: Then you also talk about Word 97

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1 or later, and I use Word all the time. You would
2 prefer it in computer format rather than printed
3 format; is that what I understood?

4 JUDGE CAILLE: Let's go off the record.

5 (Discussion off the record.)

6 JUDGE CAILLE: Any other questions?

7 MR. BOURNE: No.

8 JUDGE CAILLE: Thank you for coming today.

9 This meeting is adjourned.

10 (Prehearing conference adjourned at 2:20 p.m.)

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