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	)	SPRINT PREHEARING BRIEF
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.	)	

1. Pursuant to Order No. 5, Sprint Nextel Corporation ("Sprint Nextel"), United Telephone Company of the Northwest d/b/a Sprint ("United"), and Sprint Long Distance, Inc. ("SLDI") (collectively "Sprint" or the "Companies") provide the following Prehearing Brief on the issues properly before the Commission in this proceeding. Those issues do not include Commission Staff's proposal to rebalance United's rates or Staff's and Public Counsel's proposals to distribute to ratepayers a portion of the proceeds of Sprint Nextel's sale three years ago of its directory publishing subsidiary. The Commission, therefore, should strike these issues and the associated testimony.

BACKGROUND

2. Sprint Nextel applied to the Commission to approve the separation of Sprint Nextel's local telephone division ("LTD") operations into a new company.[1] As a result of the transaction, United's and SLDI's parent corporation will be the new LTD Holding Company, rather than Sprint Nextel. From an operational perspective, however, little will change. United and SLDI will continue to be the entities operating in Washington, and their requisite technical, financial and managerial ability to provide reliable service will remain unchanged.

3. Staff and Public Counsel have reviewed Sprint Nextel's filing and propose numerous conditions to the Commission's approval of the proposed transaction. Among Staff's proposed conditions is a request that the Commission require United to rebalance its rates by lowering its switched access charges and raising its basic residential and business service rates. In addition, both Staff and Public Counsel propose that United provide its ratepayers a proportionate share of the proceeds from Sprint Nextel's sale of its directory publishing subsidiary that occurred three years ago.

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[1] Sprint Nextel also requested that the Commission decline to assert jurisdiction to review the proposed transaction because it is occurring at the parent, rather than operating, company level. For purposes of this brief, however, Sprint assumes, without conceding, that the transfer of property statutes and rules apply to the transaction.

ARGUMENT

4. Under Washington state law, "[n]o public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission."[2] The law further provides that "[i]f, upon examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds *the proposed transaction* is not consistent with the public interest, it shall deny the application."[3] The Commission has not reviewed a transaction that is comparable to the proposed separation, but as applied to mergers, the Commission has concluded that pursuant to the public interest standard "the Commission determines whether *the transaction* is consistent with the public interest, balancing the costs and the benefits for the public and for affected customers."[4] The Commission thus focuses on the public interest impacts of the proposed transaction and applies a "no harm" standard.[5]

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[2] RCW 80.12.040; *see* RCW 80.12.020 (requiring commission approval of sale, lease, assignment or disposition by a public service company of its franchises, properties or facilities which are necessary or useful to the performance of the company's duties to the public).

[3] WAC 480-143.170 (emphasis added).

[4] *In re Joint Application of Verizon Communications, Inc., and MCI, Inc. for Approval of Agreement and Plan of Merger*, Docket No. UT-050814, Order No. 7, ¶ 59 (Dec. 23, 2005) (emphasis added) ("Verizon-MCI Merger Order").

[5] In the recent Verizon-MCI merger case, the Commission reiterated this standard, stating that "our rule does not require the Petitioners to show that customers, or the public

5. Neither rate rebalancing nor treatment of the proceeds of Sprint Nextel's sale of its directory publishing subsidiary bears any reasonable relationship to the separation of United and other local telephone companies from Sprint Nextel to a new corporate parent. Absent the transaction, United would have the exact same rates that it has today (and has had for the past several years) which would reflect the level of imputation of directory publishing revenues that has been in effect since 1989. The Commission, therefore, should not consider these issues in the context of its review of the proposed separation.

A. The Proposed Separation Has No Impact on United's Rates.

6. The Companies have not proposed to make any changes to the rates for United's regulated services in Washington in conjunction with the proposed separation. To the contrary, the intent is to make the transaction as seamless as possible for United's ratepayers, and any rate increase that would be associated with the separation would undermine that important goal.

7. Staff nevertheless proposes that United be required to lower the switched access rates that it charges interexchange carriers and increase its basic local exchange rates. Staff contends that this need arises from the proposed separation

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generally, will be made better off if the transaction is approved and goes forward. In our view, appellant's initial burden is satisfied if they at least demonstrate no harm to the public interest." *Verizon-MCI Merger Order*, Docket No. UT-050814, at p. 25, ¶ 56 (December 25, 2005).

because United's existing retail rates structure allegedly reflects a business model that is unsustainable and thus not in the public interest:

> The first question that the Commission must answer before it can approve this transaction is whether the new company will be able to fulfill its responsibilities as a public service company and, specifically, to provide telecommunications services to Washington customers that are fairly priced and reliable. If the new company's business model is unsustainable, then the transaction is not in the public interest. Staff is concerned that this is the case with respect to the company's existing retail rate structure. The company has a pattern of local and exchange access rates that do not come close to matching the cost of providing the specific services in specific locations. This leaves the company with significant business risk from regulatory or competitive activities that could take away the company's higher margin services, such as exchange access service and local exchange service in its larger communities. Just as the Commission would require the new owner to clean up a company that had service quality problems, it should in this case require Sprint to clean up its rate structure before it separates the local business unit.[6]

8. Staff's purported justification for including rate rebalancing in this proceeding does not withstand scrutiny. United has had the same basic local rates and rate structure for over 16 years. The proposed transaction does not contemplate, much less require, any change in those rates or to that rate structure. If United remained a subsidiary of Sprint Nextel, United's rates and rate structure would remain unchanged. Whatever alleged "significant business risk" that allegedly arises from United's current rate structure is in no way dependent on – or

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[6] Prefiled Testimony of Wilford Saunders on behalf of Staff at 15 (Nov. 30, 2005).

even related to – the proposed separation. In short, nothing about the transaction will affect United's local rates or increase any existing business risk.

9. Reduced to its essence, Staff's argument is that it believes that there are problems with United's rates and that those problems are related to the proposed separation because they will continue after the transaction closes.[7] If that were the standard for determining the scope of the Commission's review of an application to transfer property, there would be no limit on the issues that could be raised. Any perceived problem with a company or its operations would be fair game as long as the party raising the issue could show that the alleged problem will continue after the transfer is complete. Neither the statute nor the Commission's rule is subject to such a broad interpretation. Indeed, the Commission recently rejected a settlement condition in the Verizon-MCI merger review docket because it involved "issues that should be resolved on the basis of facts and legal issues to be determined in [a separate] proceeding." [8]

10. The proposed separation does not require or even contemplate any rebalancing of United's existing rates or modifications to the current rate structure.

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[7] *Id*. at 15-16; *see* Prefiled Testimony of Timothy W. Zawislak on behalf of Staff at 2-3 (Nov. 30, 2005) (contending that United's switched access charges violate legal standards and its local rates are outmoded, and "These issues should be corrected now, as part of the process of establishing a stand-alone incumbent local exchange carrier (ILEC) business, because to wait would perpetuate these outdated and illegal rates unnecessarily and perhaps indefinitely").

[8] Verizon-MCI Merger Order ¶ 99.

And the transaction itself does not give rise to any alleged need to modify any of those rates or that rate structure. Nor does it change the Commission's ability to address the issue in another proceeding. The Commission, therefore, should strike this issue from Staff's testimony as beyond the scope of this proceeding.

B. The Proposed Separation Does Not Raise Any Issues Concerning the 2002 Sale of Sprint Nextel's Directory Publishing Subsidiary.

11. The Companies do not propose to make any adjustment to the previously established level of directory publishing revenue imputation in United's rates as a result of the proposed separation. Indeed, Sprint Nextel's Application for Commission approval of the transaction makes no reference whatsoever to directory publishing revenues, imputation of any such revenues, or the sale of Sprint Nextel's directory publishing subsidiary in 2002.

12. Staff and Public Counsel, however, each have proposed that the Commission condition its approval of the proposed separation on a distribution to ratepayers of a portion of the proceeds from the sale of Sprint Nextel's directory publishing subsidiary. Staff does not explain why it believes that this issue arises from the transaction, but Public Counsel offers the theory that as a result of the separation, United will be permanently cut off from the proceeds of the sale, thus imperiling continued imputation of directory revenues or the gain on that sale:

> Prior to completion of the proposed transfer of control, Sprint Nextel is the parent company that realized the proceeds from the sale of the directory publishing business and the related publishing rights to

> RHD. In future rate case proceedings under the existing ownership arrangement, a directory imputation adjustment could be considered by the Commission with knowledge that UTNW's parent received the monetized gain on sale proceeds as offsetting compensation for any reduced UTNW earnings and cash flows arising from imputation. However, after the proposed transfer of control, there would no longer be any affiliate relationship between Sprint Nextel Corporation and UTNW. The parent of UTNW will have been permanently separated from the directory sale gain proceeds and will have no offsetting compensation or assets on its books to support directory imputation regulatory adjustments. What is proposed by Applicants in this Docket is a permanent prospective separation of Sprint's ILEC business segment from the directory publishing gain benefits that were captured and retained by Sprint.[9]

This purported justification is simply too insubstantial to support Commission consideration of this issue in this proceeding. And the risk of harm to United associated with the Commission deciding these issues in this case, without the benefit of a full and thorough review of United's rates, is too great.[10]

13. The current level of imputation of directory revenue has remained unchanged since 1989 – even after the sale of the directory publishing subsidiary three years ago. Sprint Nextel no longer receives any directory revenues, and it has been some time since United received them, yet United's rates continue to be artificially low because of imputation of these phantom revenues.[11] Separation of United from

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[9] Prefiled Direct Testimony of Michael L. Brosch on behalf of Public Counsel at 15 (Nov. 30, 2005).

[10] *See* Prefiled Rebuttal Testimony of Richard G. Pfeifer, pp. 2-12 (January 6, 2006).

[11] Indeed, Staff's purported concerns with "unsustainable" and "anti-competitive" cross-subsidies in United's local rates that allegedly underlie Staff's rate rebalancing proposal ring

Sprint Nextel thus will not result in any less revenue available to support directory imputation because such revenue does not currently exist and has not existed for some time.

14. Moreover, changes are likely to occur related to the many facts, conditions and circumstances surrounding rate design, as well as in market conditions for directory services. [12] These issues cannot be adequately addressed in this proceeding. Public Counsel, nevertheless, apparently fears that in some future rate case, United will be able to claim that its parent cannot afford to support a subsidy for directory imputation because Sprint Nextel received the proceeds from the sale of its directory publishing subsidiary and is no longer affiliated with United. This claim is unsupported.[13] And as the Companies explain in rebuttal testimony, United has much more fundamental and substantive reasons to believe that ratepayers are not entitled to any of the directory sale proceeds.[14] Procedurally, a rate case, rather than this proceeding, is the only appropriate proceeding to address the effect of

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hollow in light of its proposal to *increase* the amount of the subsidy to those same rates from directory imputation.

[12] *See* Prefiled Rebuttal Testimony of Richard G. Pfeifer, at pp. 2-12

[13] United's local business in Washington accounts for little more than 1% of LTD Holding Company's total access lines nationwide. Thus, there is little basis to argue that the existing subsidy in Washington could somehow bankrupt the LTD Holding Company and whether the subsidy is appropriate should be determined in a future rate case.

[14] Rebuttal Testimony of Dr. Brian K. Staihr, pp. 22-39 (January 6, 2006).

directory imputation issues on United. Public Counsel's weak speculation fails to justify premature consideration of these issues in this unrelated docket.

CONCLUSION

15. The proposed separation will not result in any change to United's local rates, including the level of directory imputation. Accordingly, neither Staff's rate rebalancing proposal nor Staff and Public Counsel's proposed conditions to distribute proceeds from the 2002 sale of Sprint Nextel's directory publishing affiliate bear any reasonable relationship to the public interest impacts of the transaction. The Commission, therefore, should refuse to consider those issues or proposed conditions in this proceeding.

Dated this 25th day of January 2006.

By: ________________________

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