

**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) MOTION TO STRIKE OR IN
Nextel Corporation for Approval of the) THE ALTERNATIVE ACCEPT
Transfer of Control of United Telephone) REVISED TESTIMONY OF
Company of the Northwest and Sprint) NANCY L. JUDY
Long Distance, Inc. From Sprint Nextel)
<u>Corporation to LTD Holding Company.</u>)

1 Pursuant to 480-07-375, 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 Motion to Strike or in the Alternative Accept Revised Testimony of Nancy L. Judy.

2 On February 6, 2006, the parties filed testimony pursuant to the Commission’s Bench Order of January 30, 2006 (“Bench Order”). Commission Staff, as part of its submission, filed a revised version of the Testimony of Wilfred Saunders, originally filed on November 30, 2005. While ostensibly deleting the discussion of rate rebalancing as required by the Commission, the revised testimony retains and recasts the rate rebalancing issues excluded by the Bench Order. Sprint therefore respectfully asks the Commission to strike certain portions of Mr. Saunders’ revised testimony. In the alternative, Sprint asks the Commission to accept the revised testimony of Nancy L. Judy, which is responsive to the revisions in Mr. Saunders’ Revised Testimony.

ARGUMENT

3 Staff revised the portions of Mr. Saunders' November 30, 2005 testimony that discussed Staff's rate rebalancing proposal, but the revised testimony continues to raise the issues the Commission determined were beyond the scope of this proceeding in the Bench Order. Specifically Mr. Saunders' revised testimony includes the following new discussion, shown in underline format:

Q. Should the Commission approve the separation and transfer of control as proposed in the Application?

A. No. As initially proposed, the spin-off of United would harm the public interest in a number of ways:

1. It would create a weak and over-leveraged parent for the regulated Washington utility with an optimistic and risky financial position, to the detriment of captive local ratepayers. It would deprive United of the benefits of operating as a unit within a more diversified company, thereby increasing the likelihood that United's own outdated and uneconomic business model will lead to financial distress of the regulated company.¹

4 Staff's assertions regarding United's business model, while Mr. Saunders does not say so explicitly, are nothing more than a veiled attempt to address the excluded rate rebalancing issue. When Mr. Saunders refers to Sprint's "business model," he is in fact referring to United's access charge rates (see footnote 2 and accompanying text below). Moreover, because the Commission has required the parties to exclude

¹ *Testimony of Wilfred Saunders*, at p. 11, ll. 1-9 (Filed November 30, 2005, Revised February 6, 2006).

testimony and evidence related to rate rebalancing, these assertions are unsupported by any facts now in the record. Therefore, the revisions to Mr. Saunders' testimony, at best, add nothing to the record with respect to the issues now before the Commission, and at worst, flout the Commission's order and continue to advocate Commission review of United's rates.

5 Mr. Saunders' revised testimony also retains a question and answer that Sprint believes should be stricken from the record for similar reasons. The question and answer has been revised as follows (~~strike through~~ indicates stricken text and underline indicates new text):

Q. Please explain why the Staff believes that the Commission ~~must address~~ should consider United's business plan ~~retail rate structure~~ as part of this case.

A. 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 transaction leaves United with~~ significant business risk from regulatory or competitive activities that could take away its higher margin services, **such as exchange access service and local exchange service** in its larger communities.²

² *Id.*, at p. 15, ll. 6-18. Emphasis added in bold. This illustrates that Staff is attempting to reassert its rejected rate rebalancing arguments under the guise of the words "business model".

This question and answer originally represented Staff's attempt to justify its proposal to rebalance United's rates. The revisions to this testimony, while they may change the emphasis of Mr. Saunders' arguments about United's access rates, still inappropriately implicate rate rebalancing. Rather than expressly propose that the Commission alter United's rates in this proceeding, Staff now apparently advocates that the Commission find the proposed transaction not to be in the public interest because the Commission will not rebalance United's rates. Staff proposes a distinction without a difference and improperly continues to recommend that the Commission conduct a review of United's rates in this proceeding.

6 The remaining discussion of rate rebalancing that was inserted into Mr. Saunders' revised testimony is to the same effect and states as follows:³

Q. Is Staff proposing to require that United revise its rate structure as a condition of this transaction?

A. No. Staff has withdrawn this proposal at the direction of the Commission. Staff recognizes that the fundamental problems with United's current business model can be addressed later. However, it is important for the Commission to understand that the business that Sprint is seeking to divest itself of has a vulnerable business model. Granted, this business risk exists today, but it is borne by a company with greater diversification and lower leverage than the one Sprint proposes to create through this leveraged spin-off. The Commission should be concerned that Sprint is

³ For the Commission's ease of reference, Sprint notes that this discussion is new to Mr. Saunders' testimony, but the document filed by Staff is not highlighted as such with underlining.

proposing to spin off a company that may not have the sustained ability to provide adequate service at reasonable rates.⁴

7 Staff pointedly is asking the Commission to review United's rates to determine whether the proposed transaction results in harm to the public interest. The Commission, however, unambiguously concluded that rate issues are beyond the scope of this proceeding. Staff cannot evade this conclusion simply by proposing a different remedy for the alleged deficiencies that Staff believes exist in United's current rate structure.

8 The Commission, therefore, should strike all of the portions of Mr. Saunders' revised testimony that Sprint has quoted in this motion. If the Commission does not strike that testimony, however, the Commission should permit Sprint to revise the Rebuttal Testimony of Nancy L. Judy to address these revisions. Sprint is prepared to remove all references to rate rebalancing from Ms. Judy's testimony, but if Staff is permitted to continue to challenge United's current rate structure, Sprint should be entitled to respond. Attached to this Motion, therefore, is revised rebuttal testimony for Ms. Judy that includes the modifications Sprint believes necessary to respond to Mr. Saunders' revised testimony.⁵

⁴ *Saunders*, at p. 16, ll. 5-16.

⁵ If the Commission grants Sprint's Motion, Sprint will resubmit revised Rebuttal Testimony for Ms. Judy that only deletes the rate rebalancing discussion.

CONCLUSION

9 The Commission ordered that it will not consider rates or rate rebalancing as an issue in this proceeding and required the parties to remove the portions of the prefiled testimony and exhibits regarding the issue. Staff nonetheless proposes to retain and add new discussion of rates and the need for rate rebalancing in Mr. Saunders' revised testimony, filed February 7, 2006. Sprint therefore respectfully requests the Commission to strike those portions of Mr. Saunders' revised testimony as follows:

- (1) Page 11, lines 5-9, as outlined in paragraph 3 of this Motion;
- (2) Page 15, lines 6-18, as outlined in paragraph 5 of this Motion; and
- (3) Page 16, lines 5-16, as outlined in paragraph 6 of this Motion.

If the Commission declines to strike this testimony, Sprint asks the Commission to accept the attached Revised Testimony of Nancy L. Judy.

Dated this 14th day of February 2006.

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

William E. 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